THE GENERAL STATUTES OF NORTH CAROLINA

1963 CUMULATIVE SUPPLEMENT

To Replacement Volume

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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Volume 2B

Place in Pocket of Corresponding 1960 Replacement Volume of Main Set and Discard Previous Supplement

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Preface

This Cumulative Supplement to replacement volume 2B contains the general laws of a permanent nature enacted at the 1961 and 1963 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplements to such volumes contain an index to statutes codified as a result of the 1961 and 1963 legislative sessions.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1961 and 1963 Sessions of the General Assembly affecting Chapters 53 through 82 of the General Statutes.

Annotations:

Sources of annotations:
- North Carolina Reports volumes 250 (p. 378)-260 (p. 132).
- Federal Reporter 2nd Series volumes 265 (p. 657)-316.
- Federal Supplement volumes 172 (p. 273)-216.
- United States Reports volumes 359 (p. 344)-372.
- Supreme Court Reporter volumes 79 (p. 944)-83 (p. 1559).
- North Carolina Law Review volumes 37 (p. 233)-41 (p. 662).

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1963 Cumulative Supplement

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Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

ARTICLE 2.

Creation.

§ 53-2. How incorporated.

(4) The amount of its authorized capital stock, the number of shares into which it is divided, the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one hundred thousand dollars ($100,000.00) in cities or towns of three thousand population and under; one hundred fifty thousand dollars ($150,000.00) in cities or towns of more than three thousand population and less than ten thousand population; two hundred thousand dollars ($200,000.00) in cities or towns of more than ten thousand population and less than twenty-five thousand population; two hundred fifty thousand dollars ($250,000.00) in cities or towns of more than twenty-five thousand population and less than fifty thousand population; or three hundred thousand dollars ($300,000.00) in cities or towns of more than fifty thousand population; and in addition shall have a paid-in surplus of at least fifty per cent (50%) of the authorized capital stock, as hereinbefore set out; the population to be ascertained by the last preceding national census: Provided, that this subdivision shall not apply to banks organized and doing business prior to its adoption. Provided, further, that fractional shares may be issued for the purpose of complying with the requirements of G. S. 53-88.

(1963, c. 793, s. 2.)

Editor's Note.—

The 1963 amendment rewrote subdivision (4). As the rest of the section was not affected by the amendment, it is not set forth above.

A banking corporation is wholly a creature of statute, doing business by legislative grace, and the right to carry on a banking business through the agency of a corporation is a franchise which is dependent on a grant of corporate powers by the State. Young v. Roberts 252 N. C. 9, 112 S. E. (2d) 758 (1960).

§ 53-3. Certificate of incorporation; how signed, proved, and filed.

Cited in Young v. Roberts, 252 N. C. 9, 112 S. E. (2d) 758 (1960).

§ 53-4. Examination by Commissioner; when certification to be refused; review by Commission.—Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he has reason to believe that

(1) The proposed corporation is formed for any other than legitimate banking business; or

(2) That the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said bank is proposed to be located; or

(3) That the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or

(4) That the name of the proposed corporation is likely to mislead the public as to its character or purpose; or

(5) That the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public. Upon such certification the Secretary of State shall issue and record such certificate of incorporation.

Notwithstanding any other provisions of this section, the Commissioner of Banks shall not make the certification to the Secretary of State described above until he shall have ascertained to his satisfaction that the establishment of such bank will meet the needs and promote the convenience of the community to be served by the bank. Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; C. S., s. 217(c); 1931, c. 243, s. 5; 1953, c. 1209, s. 1; 1963, c. 793, s. 1.)

Editor's Note.—

The 1963 amendment added the last paragraph.

Basis for Refusal to Issue Certificate.—If the certificate of incorporation complies with statutory requirements in all other respects, the authority of the Commissioner of Banks to refuse to issue such certificate to the Secretary of State must be based on a finding adverse to the proposed banking corporation in respect of one or more of the legislative standards defined in this section. Young v. Roberts, 252 N. C. 9, 112 S. E. (2d) 758 (1960).

Review by State Banking Commission.—Under this section and § 53-92, construed in pari materia, any decision made by the Commissioner of Banks in the exercise of the responsibility and authority conferred upon him by this section is subject to review by the State Banking Commission upon application by any adversely affected interested person. However, upon review of a decision of the Commissioner of Banks, with reference to a certificate of incorporation of a proposed banking corporation otherwise in compliance with the statutory requirements, the Commission has no authority to direct the Commissioner of Banks to refuse to issue a certificate of approval, except on a finding adverse to the proposed banking corporation in respect of one or more of the legislative standards defined in this section. Young v. Roberts, 252 N. C. 9, 112 S. E. (2d) 758 (1960).

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 53-5. Certificate of incorporation, when certified.

When Limitation of Section Applies.—The limitation set out in the last sentence of this section applies only in the event the "said persons" have become "a body politic and corporate" and the certificate of incorporation has been recorded and issued. Young v. Roberts, 252 N. C. 9, 112 S. E. (2d) 758 (1960).

ARTICLE 6.

Powers and Duties.

§ 53-43. General powers.

(6) Any commercial bank, savings bank, savings and loan association or trust company, heretofore or hereafter organized under any general or special laws of this State and any national bank or federal savings and loan association doing business in this State, shall have power, in addition to such other powers as it may have:

a. Upon the making of a loan or discount, to deduct in advance, from the proceeds of such loan, interest at a rate not exceeding six per centum (6%) per annum upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments: Provided, any commercial bank may exercise and enjoy all the powers now or hereafter provided in subdivision (3) of § 53-141: Provided further, that in exercising the power herein contained, savings and loan associations or federal savings and loan associations may deduct interest in advance for one month from each monthly installment payment of principal and interest on any loan, and may not deduct interest in advance from the proceeds of a loan where the maturity date of the final installment payment of said loan is three years or more from the date thereof or where the amount of said loan exceeds fifteen hundred dollars ($1500.00).

b. Nothing in subdivision (6) shall be construed as in anywise extending or increasing or decreasing the powers of commercial banks, savings banks, savings and loan associations, trust companies, national banks, or federal savings and loan associations to make loans or discount notes other than as herein or by other laws expressly provided.

(1961, c. 954.)

Editor's Note.—

The 1961 amendment inserted in subdivision (6) the references to savings and loan associations and federal savings and loan associations. Only subdivbision (6) is set out.

State banks have no powers beyond those expressly granted, or those fairly incidental thereto, in this article. Sparks v. Union Trust Co. of Shelby, 256 N. C. 478, 124 S. E. (2d) 365 (1962).

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 53-44. Investment in bonds guaranteed by United States.

Cross references.—

For other provisions as to investment of funds in hands of clerks of court by color of their office, see §§ 2-54 to 2-60.

§ 53-45. Banks, fiduciaries, etc., authorized to invest in securities approved by Federal Housing Administrator, Veterans Administrator, etc.—(a) Insured Mortgages and Obligations of National Mortgage Associations and Federal Home Loan Banks.—It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, mortgagees and loan correspondents approved by the Federal Housing Administrator, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator, in bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Veterans Administrator, in mortgages on real estate which have been accepted for insurance by the Federal Housing Administrator or Veterans Administrator, and in obligations of national mortgage associations, or bonds, debentures, consolidated bonds or other obligations of any federal home loan bank or banks.

(b) Insured Loans.—All such banks, trust companies, building and loan associations and insurance companies, mortgagees and loan correspondents approved by the Federal Housing Administrator, and other financial institutions, and also all such guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Federal Housing Administrator or Veterans Administrator has insured or has made a commitment to insure, and may obtain such insurance.

(c) Eligibility for Credit Insurance.—All banks, trust companies, building and loan associations, insurance companies, mortgagees and loan correspondents approved by the Federal Housing Administrator, and other financial institutions, on being approved as eligible for credit insurance by the Federal Housing Administrator, may make such loans as are insured by the Federal Housing Administrator, and on being approved as eligible for credit insurance by the Veterans Administrator, may make such loans as are insured or guaranteed by the Veterans Administrator.

(d) Certain Securities Made Eligible for Collaterals, etc.—Wherever, by statute of this State, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator or Veterans Administrator, debentures issued by the Federal Housing Administrator and obligations of national mortgage associations shall be eligible for such purposes.

(e) General Laws Not Applicable.—No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs. (1935, cc. 71, 378; 1937, c. 333; 1959, c. 364, s. 1; 1961, c. 291.)

Editor's Note.—

The 1961 amendment made changes in subsections (a) through (d), so as to include within the provisions loans approved by the Veterans Administrator.

§ 53-46. Limitations on investments in securities.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 53-48. Loans, limitations of.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 53-50. Reserve.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 53-52. Forged check, payment of.

Section Runs from Delivery of Each Individual Instrument. — Where several vouchers, paid and delivered at different times, are made the basis of a claim, this section applies and bars not from the delivery of the first nor the last such voucher, but runs against each individual voucher from the date of its delivery. Schwabenton v. Security Nat. Bank of Greensboro, 251 N. C. 655, 111 S. E. (2d) 856 (1960).

The burden is on the bank seeking the protection afforded by this section to show delivery of the voucher to the depositor more than sixty days before the claim is made. When that fact is established, it constitutes a complete defense to a claim based on such voucher. Schwabenton v. Security Nat. Bank of Greensboro, 251 N. C. 655, 111 S. E. (2d) 856 (1960).

§ **53-62. Establishment of branches or tellers' windows.**—(a) The word "capital" as used in this section means capital stock and unimpaired surplus.

(b) Any bank doing business under this chapter may establish branches or teller's windows in the cities or towns in which they are located, or elsewhere, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall have ascertained to his satisfaction (i) that the establishment of such branch or teller's window will meet the needs and promote the convenience of the community to be served by the bank, and (ii) that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or teller's window and of the existing bank or banks in said community.

(c) Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the Commissioner of Banks shall not authorize the establishment of any branch or teller's window, the capital of whose parent bank is not sufficient in an amount to provide for the capital of at least one hundred thousand dollars ($100,000.00) for the parent bank, and a capital of at least one hundred thousand dollars ($100,000.00) for each branch or teller's window which it is proposed to establish in cities or towns of three thousand population or less; at least one hundred fifty thousand dollars ($150,000.00) in cities or towns whose population exceeds three thousand, but does not exceed ten thousand; at least two hundred thousand dollars ($200,000.00) in cities or towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; at least two hundred fifty thousand dollars ($250,000.00) in cities or towns whose population exceeds twenty-five thousand, but does not exceed fifty thousand; at least three hundred thousand dollars ($300,000.00) in cities or towns whose population exceeds fifty thousand. The provisions of this subsection shall not be retroactive with respect to branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963. If a bank which hereafter proposes to establish a branch or teller's window is deficient in capital stock as measured by the above set-forth formula, it shall not be necessary for such bank to provide or allocate additional capital for branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963, until such a time as such bank makes application for an additional branch or teller's window. At that time sufficient capital and surplus must be allocated to bring the parent bank and all branches and teller's windows into compliance with the above requirements. The bank may, at its option, allocate capital stock and unimpaired surplus, or either, to its branches and teller's windows and may determine the proportion of each, or may allocate all capital stock or all unimpaired surplus. In applying this section, population shall be ascertained by the last preceding national census; provided, however, with respect to any branch or teller's windows established or approved by the State Banking Commission before June 11, 1963, population shall be ascertained by the last national census preceding the establishment of such branch.

(d) A teller's window within the meaning of this section shall be considered to be a place in which no loans or investments for the bank are made and at which only the functions and duties of a bank teller are performed. Upon securing the approval provided for in subsection (b) of this section and upon compliance with the capital requirements set forth in subsection (c) of this section, a teller's window may be established in a small community having no other banking facilities. Notwithstanding any other provisions in this section, a teller's window may also be established in a city or town in which the applicant bank's home office or a branch thereof is located or within two miles of the limits of such city or town without complying with the capital allocation requirements of subsection (c) of this section with respect to said teller's window if the Commissioner shall find that the capital of said bank will not be unduly impaired by the establishment of such teller's window, and any such teller's window which has been heretofore or may hereafter be so established or approved by the Banking Commission shall not be taken into account in computing the capital allocation requirements for the parent bank and other branches and teller's windows of such bank.

(e) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 43; Ex. Sess. 1921, c. 56, s. 2; C. S., s. 220(r); 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1; 1935, c. 139; 1947, c. 990; 1953, c. 1209, ss. 2, 5; 1963, c. 793, s. 3.)

Editor's Note.—

The 1963 amendment rewrote this section.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

ARTICLE 7.

Officers and Directors.

§ 53-85. Stockholders' book.

Right to Inspect.—Under this section the right to inspect stock books in banks is specifically given. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

ARTICLE 8.

Commissioner of Banks and Banking Department.

§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.—On or before April first, one thousand nine hundred and thirty-one, after the ratification of this section, and quadrennially thereafter, the Governor, with the advice and consent of the Senate, shall appoint a Commissioner of Banks who shall hold his office for a term of four years or until his successor has been appointed and has qualified, subject, however, to the provisions herein made as to his removal. The Commissioner of Banks shall, before entering upon the discharge of his duties, enter into bond with some surety company authorized to do business in the State of North Carolina, in the sum of not less than fifty thousand dollars, conditioned upon the faithful and honest discharge of all duties and obligations imposed by statute upon him.

The State Banking Commission, which has heretofore been created, shall hereafter consist of the State Treasurer, who shall serve as an ex officio member thereof, and ten (10) members who shall be appointed by the Governor. Five members of the said Commission shall be practical bankers and the remainder of the membership of said Commission shall be selected so as to fairly represent the industrial, manufacturing, business and farming interests of the State. The terms of office of the two additional members who are now to be appointed shall expire on the first day of April, 1957, and thereafter their successors shall be appointed by the Governor for terms of four years each and shall serve until their successors are appointed and qualified. One member shall be appointed for a four (4) year term commencing April 1, 1961, and his successor shall be appointed quadrennially thereafter. Successors to members whose terms expired on the first of April, 1953, shall be filled by the Governor for the unexpired portion of the four-year terms which began on said date. Members of the Commission whose present terms expire on the first day of April, 1955, shall continue in office until the expiration of their respective terms and until their successors are appointed and qualified. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the Governor for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission, which compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any state banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within twenty days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)". It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In event of an appeal the Commissioner shall certify the record to the clerk of Superior Court of Wake County within fifteen days thereafter. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2.)

Cross Reference.—See note under § 53-2.

Editor's Note.—

The 1961 amendment rewrote the first sentence of the second paragraph and inserted the fourth sentence thereof. The Attorney General was formerly an ex officio member of the State Banking Commission, and the number of appointive members was increased from nine to ten.

§ 53-92.1. Commission bound by requirements imposed on Commissioner as to certification of new banks, establishment of branches, etc.—Notwithstanding any other provisions of this chapter, the State Banking Commission, in the exercise of its authority to review the action of the Commissioner of Banks, shall be bound by the requirements, conditions and limitations imposed in this chapter on said Commissioner as to the certification of new banks or the establishment of branch banks or teller's windows. (1963, c. 793, s. 4.)

§ 53-104. Commissioner of Banks shall have supervision over, etc.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

ARTICLE 10.

Penalties.

§ 53-124. Examiner making false report.

Cross Reference.—

For identical section, see § 14-233.

ARTICLE 15.

North Carolina Consumer Finance Act.

§ 53-164. Title.—This article shall be known and may be cited as the North Carolina Consumer Finance Act. (1961, c. 1053, s. 1.)

Editor's Note.—Session Laws 1961, c. 1053, amended this article, effective August 18, 1961, so as to repeal the North Carolina Small Loans Act, containing §§ 53-164 through 53-173, and derived from Session Laws 1955, c. 1279, as amended by Session Laws 1957, c. 1429. The Small Loans Act was also amended by Session Laws 1961, cc. 11 and 159. The article was first derived from Public Laws 1945, c. 282 and entitled "Loan Agencies or Brokers," containing §§ 53-164 through 53-168.

Session Laws 1961, c. 1053, s. 3 provides that all laws and clauses of laws in conflict with this article are hereby repealed; provided, however, G. S. 105-88 is not hereby repealed; provided G. S. 14-391 shall not be applicable to persons licensed under this article; and, provided, further, all other laws and provisions of laws repealed by this article shall, notwithstanding, continue in force and effect with respect to all acts prohibited or required to be performed pursuant thereto prior to August 18, 1961.

Session Laws 1961, c. 1053, s. 4 provides that no person, as defined in G. S. 53-165, who does not have a permit or license to engage in the business regulated by article 15 of chapter 53 of the General Statutes on June 19, 1961, shall be issued any such permit or license within sixty (60) days after such ratification.

§ 53-165. Definitions.—(a) "Amount of the loan" shall mean the aggregate of the cash advance and the charges authorized by § 53-173.

(b) "Borrower" shall mean any person who borrows money from any licensee or who pays or obligates himself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(c) "Cash Advance" shall mean the amount of cash or its equivalent that the borrower actually receives or is paid out at his discretion or on his behalf.

(d) "Commission" shall mean the State Banking Commission.

(e) "Commissioner" shall mean the Commissioner of Banks.

(f) "Deputy Commissioner" shall mean the Deputy Commissioner of Banks.

(g) "License" shall mean the certificate issued by the Commissioner under the authority of this article to conduct a consumer finance business.

(h) "Licensee" shall mean a person to whom one or more licenses have been issued.

(i) "Loanable assets" shall mean cash or bank deposits or installment loans made as a licensee pursuant to this article or installment loans made as a licensee pursuant to the article which this article supersedes or such other loans payable on an installment basis as the Commissioner of Banks may approve, or any combination of two or more thereof.

(j) "Person" shall include any person, firm, partnership, association or corporation. (1957, c. 1429, s. 1; 1961, c. 1053, s. 1.)

§ **53-166. Scope of article; evasions; penalties; loans in violation of article void.**—(a) Scope.—No person shall engage in the business of lending in amounts of six hundred dollars ($600.00) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than six per cent (6%) per annum, except as provided in and authorized by this article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions.—The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession.—Any person not exempt from this article, or any officer, agent, employee or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this article, or any regulation of the banking commission adopted pursuant to this article, shall be guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars ($500.00) nor more than twenty-five hundred dollars ($2500.00) or imprisoned not less than four (4) months nor more than two (2) years, or both, in the discretion of the court. Each such violation shall be considered a separate offense. It shall be the duty of the Commissioner of Banks to provide the solicitor of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and to testify as to such facts upon the trial of any person for any such offense.

(d) Additional Penalties.—Any contract of loan, the making or collecting of which violates any provision of this article, or regulation thereunder, except as a result of accidental or bona fide error of computation shall be void and the licensee shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such loan. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1.)

§ **53-167. Expenses of supervision.**—Each licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and his agents in supervising them, shall pay to the Commissioner of Banks the fees prescribed in G. S. 53-122 at the times therein specified. (1955, c. 1279; 1957, c. 1429, s. 1; 1961, c. 1053, s. 1.)

§ **53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**—(a) Necessity for License; Prerequisites to Issuance.—No person shall engage in or offer to engage in the business regulated by this article unless and until a license has been issued by the Commissioner of Banks, and the Commissioner shall not issue any such license unless and until he finds:

(1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business; and

(2) That the financial responsibility, experience, character and general fit-

ness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, within the purposes of this article; and

(3) That the applicant has available for the operation of such business at the specified location loanable assets of at least twenty-five thousand dollars ($25,000.00).

(b) Investigation of Applicants.—Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), he shall so notify the applicant who shall then be entitled to a hearing thereon provided he so requests in writing within thirty (30) days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of one hundred dollars ($100.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Existing Businesses.—Notwithstanding the provisions of this section, any person engaged in the business of making direct cash loans pursuant to the North Carolina Small Loans Act, article 15 of chapter 53 as in effect prior to August 18, 1961, on August 18, 1961, if the person shall meet the requirements of subdivision (3) of subsection (a) of this section, shall receive a license on filing the required application within not more than six (6) months after August 18, 1961, and during such six (6) months period shall be deemed a licensee under this article.

(d) Required Assets Available.—Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least twenty-five thousand dollars ($25,000.00). The requirements and standards of this subsection and subsection (a) (2) of this section shall be maintained throughout the period of the license and failure to maintain such requirements or standards shall be grounds for the revocation of a license under the provisions of § 53-171 of this article.

(e) License, Posting, Continuing.—Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership, or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. (1961, c. 1053, s. 1.)

§ **53-169. Application for license.**—The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this article; and

(2) Whether the applicant is an individual, partnership, association or corporation; and

(3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf. (1961, c. 1053, s. 1.)

§ **53-170. Locations; change of ownership or management.** — (a) Business Location.—A licensee may conduct and carry on his business only at such location or locations as may be approved by the Commissioner of Banks, and no changes shall be made from one location to another without the approval of the Commissioner.

(b) Additional Places of Business.—Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing issuance of a single license.

(c) Change of Location, Ownership or Management.—If any change occurs in the name and address of the licensee or of the president, secretary or agent of a corporation, or in the membership of any partnership under said sections, a true and full statement of such change, sworn to in the manner required by this article in the case of the original application, shall forthwith be filed with the Commissioner. (1961, c. 1053, s. 1.)

§ **53-171. Revocation, suspension or surrender of license.**—(a) If the Commissioner shall find, after due notice and hearing, or opportunity for hearing, that any such licensee, or an officer, agent, employee, or representative thereof has violated any of the provisions of this article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Commission pursuant to the powers and duties prescribed therein, or has failed or refused to make its reports to the Commissioner, or has failed to pay the fees for its examination and supervision, or has furnished false information to the Commissioner or the Commission, the Commissioner may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in North Carolina as a licensee, and upon receipt of such an order from the Commissioner, the licensee shall immediately surrender his license to the Commissioner. Within five (5) days after the entry of such an order the Commissioner shall place on file his findings of fact and mail or otherwise deliver a copy to the licensee. Any licensee who fails to make any loans during any period of ninety (90) consecutive days after being licensed shall surrender his license to the Commissioner.

(b) Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(c) No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligor.

(d) The Commissioner, in his discretion, may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked, or surrendered if and when he determines no fact or condition exists which clearly would have justified the Commissioner in refusing originally to issue such license under this article. (1955, c. 1279; 1961, c. 1053, s. 1.)

§ **53-172. Conduct of other business in same office.**—No licensee subject to the provisions of this article shall conduct its business as a licensee in an office, or annex to an office, or any other business, but shall maintain an office in which only its business as a licensee shall be conducted. Installment paper dealers as defined in G. S. 105-83 shall not be considered as being any other business within the meaning of this section. The books, records and accounts relating to loans shall be kept in such manner as the Commissioner prescribes so as to delineate clearly the loan business from any installment dealer paper transactions. (1961, c. 1053, s. 1.)

§ **53-173. Maximum rate of charge.** — Every licensee hereunder may contract for and receive charges on any loan of money not exceeding six hundred dollars ($600.00) in amount as follows:

(1) The charge for payment according to schedule may be computed on the amount of cash advance for the full term of the contract without regard to the requirement for installment payments at rates not exceeding the equivalent of twenty dollars ($20.00) per one hundred dollars ($100.00) per annum for that part of the amount of the cash advance not exceeding one hundred dollars ($100.00), eighteen dollars ($18.00) per one hundred dollars ($100.00) per annum for that part of the amount of cash advance exceeding one hundred dollars ($100.00) but not exceeding two hundred dollars ($200.00), fifteen dollars ($15.00) per one hundred dollars ($100.00) per annum for that part of the amount of cash advance exceeding two hundred dollars ($200.00) but not exceeding three hundred dollars ($300.00), and six dollars ($6.00) per one hundred dollars ($100.00) per annum for that part of the amount of cash advance exceeding three hundred dollars ($300.00) but not exceeding six hundred dollars ($600.00).

(2) On loans of seventy-five dollars ($75.00) or less, a licensee may charge, in lieu of the charges specified in subdivision (1) of this section, at a rate not in excess of one dollar ($1.00) for each five dollars ($5.00) of cash advance to the borrower up to the amount of seventy-five dollars ($75.00) and a period of at least fifteen (15) days must be allowed for repayment of each five dollars ($5.00) cash advance. Such charges shall not be assessed by any subterfuge or device on any loan over seventy-five dollars ($75.00) or on any balance of seventy-five dollars ($75.00) or less when the original loan was greater than seventy-five dollars ($75.00).

(3) A licensee shall compute monthly charges for a period of time less than one year at one twelfth of the annual rate for each loan month and shall compute charges for a period of less than one loan month at one thirtieth of one twelfth of the annual rate for each day. A loan month is that period of time from one date in the month through the corresponding date in the next month. If there is no corresponding date, then the last day of the next month will be used.

(4) The licensee shall not fix a due date of the first installment of any loan contract providing for monthly installments for a term exceeding forty-five (45) actual days from the date of the loan. When the first payment of any such contract may be due on a date beyond a loan month defined above, a licensee will be permitted to make an additional charge for the number of days in excess of thirty (30) or the number of days in excess of one loan month from the date of the loan, whichever is less.

(5) Subject to the limitations contained in this article as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto. The notice herein required may be given by mailing such notice to the offices of the licensees as shown in the records of the Commissioner of Banks. Any such changed maximum rates of charge shall not affect pre-ex-

isting loan contracts lawfully entered into between any licensee and any borrower. (1961, c. 1053, s. 1.)

§ **53-174. Refund.**—When any loan contract is paid in full by cash, a new loan, renewal or otherwise, after two loan months have expired, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78's or sum of the digits principle as follows:

"The amount of the refund or credit shall be at least as great a proportion of the total charges originally contracted for, excluding any adjustment made for a first period of more than one (1) month, as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, those sums to be determined according to the payment schedule originally contracted for." If a loan is prepaid in full by cash, a new loan, renewal or otherwise, two loan months or less from the date of the contract, the licenses shall make a pro rata refund of the charges to the borrower or shall credit such amount to the borrower. In computing any required refund, any prepayment made on or before the 15th day following an installment date shall be deemed to have been made on the installment date preceding such prepayment and any prepayment made after the 15th day following an installment date shall be deemed to have been made on the installment date following such installment; provided, such computation shall not result in refunds by the rule of 78's method on loans prepaid two loan months or less from the date of the contract. When loans are prepaid fifteen (15) days or less from the date the loan is made, licensees are authorized in computing refunds to divide the original add-on charge by that figure which represents the number of loan months in the contract. The original add-on charges less the resultant quotient shall constitute the amount of the refund; provided, whenever the resultant quotient is less than two dollars ($2.00), the minimum charge shall be fixed at two dollars ($2.00) or the total original add-on charges, whichever is the lesser. The tender by the borrower, or at his request, of an amount equal to the unpaid balance less the required refund must be accepted by the licensee in full payment of the contract. (1961, c. 1053, s. 1.)

§ **53-175. Default charge.**—(a) If the contract so provides, an additional charge for any installment past due ten (10) days or more according to the original terms of the contract by reason of default may be made in an amount not to exceed five per cent (5%) of the amount of the installment past due and said amount may be charged once and no more on the same default; provided, that if such charge is deducted from a payment made on the loan and such deduction results in a default of a subsequent installment, no charge shall be made for such subsequent default; provided, further, that once a borrower has incurred a default charge pursuant to this section, no default charge shall be incurred with respect to any future payments which would not have been in default except for the previous default.

(b) If there is an unpaid balance on a loan at the maturity date of the original contract, an additional charge at a rate not to exceed six per cent (6%) per annum may be charged on the outstanding balance until the loan is paid in full by cash, a new loan, renewal or otherwise. (1961. c. 1053, s. 1.)

§ **53-176. Optional rates, maturities and amounts.**—In lieu of making loans in the amount, for the term and at the charges stated respectively in G. S. 53-166, 53-173 and 53-180, a licensee may at any time elect to make loans in any amount including loans in excess of six hundred dollars ($600.00), for any term including more than 24 months, subject to all the other provisions of this article, provided that the charges for the entire amount for each such loan made by such electing licensee during the period that such election is in effect shall not exceed the same fees and interest set forth in G. S. 53-141. Such election shall be made by the filing of a written statement to that effect by the licensee with the Commissioner and can be terminated by cancellation notice filed by the licensee in writing with the Commissioner.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee which is making loans under this article otherwise than as authorized specially in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee making an election to make loans in accordance with the provisions of this section shall respectively be bound by such election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State. (1961, c. 1053, s. 1.)

§ **53-177. Recording fees.**—The licensee may collect from the borrower the actual fees paid a public official or agency of a county or the State, for filing, recording, or releasing any instrument securing the loan. A licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this article. In lieu of recording any instrument and in lieu of collecting any recording fee herein authorized, a lender may take out nonrecording or nonfiling insurance on the instrument securing the loan and charge to the borrower the amount of the premium as fixed by the Commissioner of Insurance, but the amount so charged to the borrower shall not in any event exceed sixty cents (60¢) with respect to any one loan. (1961, c. 1053, s. 1.)

§ **53-178. No further charges; no splitting contracts; certain contracts void.**—No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this article. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. (1961, c. 1053, s. 1.)

§ **53-179. Multiple office loan limitations.**—A licensee shall not grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete. This section shall apply to intrastate and interstate operations. A licensee shall take every reasonable precaution to prevent granting loans in violation of this section. Such loans granted inadvertently resulting in a total liability of six hundred dollars ($600.00) or less, shall be adjusted to the rates applicable under this article to a single loan of equivalent amount, and when the total liability on such loans is in excess of six hundred dollars ($600.00), interest shall be adjusted to simple interest at six per cent (6%) per year on the entire obligation. (1961, c. 1053, s. 1.)

§ **53-180. Time and payment limitation.**—No licensee shall enter into any contract of loan under this article extending more than twenty-five loan months from the date of making the contract. Every loan contract shall require payment of cash advance and charges, as aggregated, in installments which shall be payable at approximately equal periodic intervals. No installment contracted for shall be substantially larger than any preceding installment. (1961, c. 1053, s. 1.)

§ **53-181. Statements and information to be furnished to borrowers; power of attorney or confession of judgment prohibited.** — (a)

Contents of Statement Furnished to Borrower.—At the time a loan is made, the licensee shall deliver to the borrower, or if there be two or more borrowers, to one of them a copy of the loan contract, or a written statement, showing in clear and distinct terms:

(1) The name and address of the licensee and one of the primary obligors on the loan;
(2) The date of the loan contract;
(3) Schedule of installments or descriptions thereof;
(4) The cash advance;
(5) The face amount of the note evidencing the loan;
(6) The amount collected or paid for insurance, if any;
(7) The amount collected or paid for filing or other fees allowed by this article;
(8) The collateral or security for the loan.

(b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner.—Each licensee doing business in North Carolina shall make readily available to the borrower at each place of business such full and accurate schedule of charges and insurance premiums, including refunds and rebates, on all classes of loans currently being made by such licensee, as the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the Commissioner of Banks.

(c) Power of Attorney or Confession of Judgment Prohibited.—No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void. (1955, c. 1279; 1961, c. 1053, s. 1.)

§ 53-182. Payment of loans; receipts.—(a) After each payment made on account of any loan, the licensee shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance due on the loan. No receipt shall be required in the case of payments made by the borrower's check or money order, where the entire proceeds of the check or money order are applied to the loan. The use of a coupon book system shall be deemed in compliance with this section.

(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee. (1955, c. 1279; 1961, c. 1053, s. 1.)

§ 53-183. Advertising, broadcasting, etc., false or misleading statements.—No licensee subject to this article shall advertise, display, distribute, telecast, or broadcast or cause or permit to be advertised, displayed, distributed, telecasted, or broadcasted, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans. The Commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Commissioner may permit or require licensees to refer in their advertising to the fact that their business is under State supervision, subject to conditions imposed by him to prevent an erroneous impression as to the scope or degree of protection provided by this article. (1957, c. 1429, s. 3; 1961, c. 1053, s. 1.)

§ 53-184. Securing of information; records and reports; allocations of expense.—(a) Each licensee shall maintain in his local office all records required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time.

(b) Each licensee shall file annually with the Commissioner of Banks on or before the 31st day of March for the twelve months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. Such reports shall disclose in detail and under appropriate headings the resources, assets and liabilities of such licensee at the beginning and at the end of the period, the income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, the ratios of the profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security, and such other information as the Commissioner may require. Such reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of such licensee.

(c) If a licensee conducts another business or is affiliated with other licensees under this article, or if any other situation exists under which allocations of expense are necessary, the licensee or licensees shall make such allocation according to appropriate and reasonable accounting principles.

(d) If a licensee is affiliated with other licensees, all of the affiliated lenders shall file composite annual reports in addition to the separate reports required in subsection (b) of this section, in such form as the Commissioner may require. (1955, c. 1279; 1957, c. 1429, s. 4; 1961, c. 1053, s. 1.)

§ **53-185. Rules and regulations by Banking Commission and Commissioner.**—The State Banking Commission is hereby authorized, empowered and directed to make all rules and regulations deemed by the Commission to be necessary in implementing this article and in providing for the protection of the borrowing public and the efficient management of such licensees and to give all necessary instructions to such licensees for the purpose of interpreting this article; provided, the Commissioner is hereby authorized to make such rules and regulations and issue such orders as he deems necessary and desirable in implementing and carrying out the provisions of § 53-184. And it shall be the duty of all such licensees, their officers, agents and employees, to comply fully with all such rules, regulations and instructions. When promulgated, any rule or regulation shall be forwarded by mail to each licensee at its licensed place of business at least twenty (20) days prior to its effective date. (1955, c. 1279; 1961, c. 1053, s. 1.)

§ **53-186. Commissioner to issue subpoenas, conduct hearings, give publicity to investigations, etc.** — The Commissioner of Banks shall have the power and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of witnesses, administer oaths, conduct hearings and transcribe testimony in making the investigations and conducting the hearings provided for herein or in the other discharge of his duties, and to give such publicity to his investigations and findings as he may deem best for the public interest. (1957, c. 1429, s. 5; 1961, c. 1053, s. 1.)

§ **53-187. Injunctive powers; receivers.**—Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this article, he may in addition to all actions provided for in this article, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought in the name of the Commissioner on the relation of the State of North Carolina to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this article through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court. (1957, c. 1429, s. 6; 1961, c. 1053, s. 1.)

§ **53-188. Review of regulations, order or act of Commission or Commissioner.**—The Commission shall have full authority to review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this article and any person aggrieved by any such rule, regulation, order or act may appeal to the Commission for review upon giving notice in writing within twenty (20) days after such rule, regulation, order or act complained of is adopted, issued or done. The validity of any rule, regulation, order or act of the Commission shall be subject to judicial review as provided in article 33, chapter 143 of the General Statutes of North Carolina. (1957, c. 1429, s. 6; 1961, c. 1053, s. 1.)

§ **53-189. Insurance.**—(a) Credit Life Insurance.—The amount of credit life insurance shall not exceed the original indebtedness, but this insurance may be carried on the loan to maturity at level term.

(b) Credit Accident and Health Insurance.—The amount of periodic indemnity payable with respect to any one installment payment period by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the original amount of the loan divided by the number of periodic installment payment periods, and such insurance shall not extend over any longer period of time than the loan contract.

(c) Group Contracts for Insurance; Insurance to Be Required of Only One Obligor.—Notwithstanding any other provision of this article, a licensee may sell such insurance or provide the same under a group contract, subject to the applicable laws of the State relating to insurance. Any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such above described insurance or its sale shall not be deemed to be an additional or further charge in connection with the contract of loan. No insurance authorized by subsections (a) and (b) of this section shall be required with respect to more than one obligor of any one loan contract.

(d) When Credit, etc., Insurance Not to Be Required.—Notwithstanding any other provisions of this article, no licensee shall require any borrower to obtain credit accident and health insurance when a loan is secured by collateral consisting of personal property with respect to which property loss insurance has been required to be obtained.

(e) Licensee Not to Receive Commissions, etc., on Property Loss Insurance.—No licensee shall directly or indirectly receive any commission, premium or profit from the sale of any property loss insurance on any property used as collateral to secure any loan made pursuant to the provisions of this article.

(f) Sale to Comply with Chapter 58 of G. S.—Notwithstanding any other provisions of this section or article, nothing herein contained shall be construed to authorize the sale of insurance in violation of any of the provisions of chapter 58 of the General Statutes or the rules and regulations promulgated pursuant thereto. (1961, c. 1053, s. 1.)

§ **53-190. Loans made elsewhere.**—No loan contract made outside this State in the amount or of the value of six hundred dollars ($600.00) or less for which a greater consideration, or charges than is authorized by § 53-173 of this article has been charged, contracted for, or received shall be enforced in this

State and every person in anywise participating therein in this State shall be subject to the provisions of this article; provided, that the foregoing shall not apply to loans legally made in another state. (1961, c. 1053, s. 1.)

§ **53-191. Businesses exempted.**—Nothing in this article shall be construed to apply to any person, firm or corporation engaged solely in the business of making loans of fifty dollars ($50.00) or more secured by motor vehicles, nor to any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the Act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G. S. 105-41, nor to installment paper dealers as defined in G. S. 105-83 other than persons, firms and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1.)

ARTICLE 16.

Sale of Checks Act.

§ **53-192. Citation of article.**—This article shall be known and may be cited as the "Sale of Checks Act." (1963, c. 1251, s. 1.)

Editor's Note.—The act inserting this article became effective July 31, 1963.

§ **53-193. Definitions.**—For the purpose of this article:

(1) "Person" means any individual, partnership, association, joint stock association, trust or corporation;

(2) "Licensee" means any person duly licensed by the Commissioner pursuant to this article;

(3) "Check" means any check, draft, money order or other instrument for the transmission or payment of money;

(4) "Commissioner" means the Commissioner of Banks of the State of North Carolina. (1963, c. 1251, s. 2.)

§ **53-194. License required to sell or issue checks; exception.**—No person shall sell or issue checks in this State as a service or for a fee or other consideration without first obtaining a license from the Commissioner pursuant to the provisions of this article, provided, however, that this article shall not apply to the receipt of money by an incorporated telegraph company at any office or agency of such company for immediate transmission by telegraph. (1963, c. 1251, s. 3.)

§ **53-195. Exemptions.**—Nothing in this article shall apply to the sale or issuance of checks by:

(1) Corporations organized under the general banking laws of this State or of the United States.

(2) The government of the United States or any department or agency thereof.

(3) Savings and loan associations organized under the laws of this State or of the United States. (1963, c. 1251, s. 4.)

§ **53-196. Form and contents of license applications.**—Each application for a license to sell or issue checks in this State shall be made in writing and under oath to the Commissioner in such form as he may prescribe. The application shall state the full name and business address of

(1) The proprietor, if the applicant is an individual;
(2) Every member, if the applicant is a partnership or association, except that if the applicant is a joint stock association having fifty or more members the name and business address need be given only of the association and each officer and director thereof;
(3) The corporation and each officer and director thereof, if the applicant is a corporation. (1963, c. 1251, s. 5.)

§ **53-197. Investigation fee.**—Each application for a license shall be accompanied by an investigation fee of five hundred dollars ($500.00). If the license is granted, the investigation fee shall be applied to the license fee for the first year. No investigation fee shall be refunded. (1963, c. 1251, s. 6.)

§ **53-198. Approved applicants to furnish surety bonds; lists of locations; cancellation of bonds.**—Each approved applicant shall furnish a corporate surety bond in the principal sum of one hundred and fifty thousand dollars ($150,000.00) and an additional principal sum of five thousand dollars ($5,000.00) for each location within this State at which checks of the licensee are issued or sold, but in no event shall the bond be required to be in excess of two hundred and fifty thousand dollars ($250,000.00). Each application for a license or for the renewal of a license shall be accompanied by a list of the locations, including agencies, at which the applicant engages in the business of selling checks in this State. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this article and will honestly and faithfully apply all funds received and perform all obligations issued and sold under this article and will pay to the State and to any person entitled thereto all money that becomes due and owing to the State or to such person under the provisions of this article because of any checks issued or sold in this State by such licensee or his agent or employee. The bond shall remain in force and effect until canceled by the surety, which cancellation may be had only upon thirty days' written notice to the Commissioner. Such cancellation shall not affect any liability incurred or accrued prior to the termination of such thirty-day period. (1963, c. 1251, s. 7.)

§ **53-199. Requiring additional bonds; deposits in lieu of bonds.** — (a) If the Commissioner shall find at any time that any bond required under this article is insecure, insufficient or exhausted, an additional bond to be approved by the Commissioner shall be filed by the licensee within ten (10) days after written demand therefor by the Commissioner.

(b) In lieu of any bond required under this article, the licensee may deposit with the Commissioner securities with a par value equal to the amount of any such bond. Such securities shall consist of

(1) General obligations of or fully guaranteed by the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or
(2) Direct general obligations of the State of North Carolina, or of any county, city, town, or other political subdivision or municipal corporation of the State of North Carolina.

Such securities shall be held by the Commissioner to secure the same obligation as would any bond required by this article. The securities so deposited may be exchanged from time to time for other securities receivable as aforesaid. All said securities shall be subject to sale and transfer and to the disposal of the proceeds by said Commissioner only on the order of a court of competent jurisdiction. So long as the licensee so depositing shall continue solvent, and is not in violation of any of the provisions of this article, such licensee shall be permitted to receive the interest or dividends on said deposit. The Commissioner shall provide for custody of such securities by any qualified trust company or bank located in the State of North Carolina or by any federal reserve bank. The compensation, if any, of the custodian for acting as such under this section shall be paid by the depositing licensee. (1963, c. 1251, s. 8.)

§ **53-200. Investigation of applicants; issuance of licenses.** — Upon the filing of the application, the payment of the investigation fee and the approval by the Commissioner of the bond or securities delivered pursuant to § 53-198 or § 53-199, the Commissioner shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant and, if he deems it advisable, of its officers and directors, and, if he finds these factors and qualities meet the requirements of this article and are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community, he shall issue to the applicant a license to sell and issue checks subject to the provisions of this article. (1963, c. 1251, s. 9.)

§ **53-201. Minimum net worth of licensees.**—Each licensee under this article shall at all times maintain a minimum net worth of at least one hundred thousand dollars ($100,000.00). (1963, c. 1251, s. 10.)

§ **53-202. License fees.** — Each licensee shall pay to the Commissioner within five (5) days after the issuance of the license, and annually thereafter on or before June 30th of each year, a license fee of five hundred dollars ($500.00). (1963, c. 1251, s. 11.)

§ **53-203. More than one location authorized; employees, agents and representatives.**—Each licensee may conduct business at one or more locations within this State and through or by means of such employees, agents, subagents or representatives as such licensee may from time to time designate and appoint. No license under this article shall be required of any such employee, agent, subagent or representative who is acting for or in behalf of a licensee hereunder in the sale of checks of which the licensee is the issuer. Each such agent, subagent or representative shall upon demand transfer and deliver to the licensee the proceeds of the sale of licensee's checks less the fees, if any, due such agent, subagent or representative. (1963, c. 1251, s. 12.)

§ **53-204. Annual lists of locations and agents; annual financial statements; audits.**—Each licensee shall file with the Commissioner annually on or before June 30th of each year a statement listing the locations of the offices of the licensee and the names and locations of the agents or subagents authorized by the licensee to engage in the sale of checks of which the licensee is the issuer and shall also file a statement correctly reflecting its net worth as of the close of its most recent fiscal year, such statement to be certified to by a certified public accountant satisfactory to the Commissioner. The Commissioner may conduct or cause to be conducted an examination or audit of the books and records of any licensee at any time or times he shall deem proper, the cost of such examination or audit to be borne by the licensee. The refusal of access to such books and records shall be cause for the revocation of license. (1963, c. 1251, s. 13.)

§ **53-205. Exempt agents need not be listed.**—Nothing in this article shall be deemed to require a licensee to list agents which are exempted by the provisions of § 53-195 of this article. (1963, c. 1251, s. 14.)

§ **53-206. Notice of denial or revocation of license; hearing; appeal.**—No license shall be denied or revoked except on ten days' notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within five (5) days of such receipt, make written demand for a hearing. The Commissioner shall thereafter, with reasonable promptness, hear and determine the matter as provided by law and his decision shall be subject to judicial review in the Superior Court of Wake County as provided by law. (1963, c. 1251, s. 15.)

§ **53-207. Grounds for revoking licenses.**—The Commissioner may at any time revoke a license on any ground on which he might refuse to grant a license or for failure to pay an annual fee or for the violation of any provision of this article. (1963, c. 1251, s. 16.)

§ **53-208. Violation a misdemeanor.**—If any person to whom or to which this article applies or any agent, subagent or representative of such person violates any of the provisions of this article or attempts to sell or issue checks without having first obtained a license from the Commissioner pursuant to the provisions of this article, or issues any check at a time when the bond or security required by this article is not in full force and effect, such person or such agent, subagent or representative shall be deemed guilty of a misdemeanor, and upon conviction shall be fined or imprisoned within the discretion of the court and each violation shall constitute a separate offense. (1963, c. 1251, s. 17.)

Chapter 53A.

Business Development Corporations.

§ **53A-6. Applications for membership in corporation; acceptance; loans to corporation by members.**

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times the capital of the corporation. For the purposes of this paragraph, the capital of the corporation shall include the amount of the outstanding capital stock of the corporation, whether common or preferred, the earned or paid-in surplus of the corporation, and the amount of any outstanding debentures of the corporation, the payment of which is subordinated to all obilgations of the corporation other than the obligations of the corporation to the holders of its capital stock.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

  a. Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

  b. The following limit, to be determined as of the time such member becomes a member or at any time requested by a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance: A minimum of two per cent (2%) to a maximum of four per cent (4%) of the capital and surplus of commercial banks and trust companies, the percentage within such limits to be determined by such member; a minimum of one-half of one per cent (.5 of 1%) to a maximum of one per cent (1%) of the total outstanding loans made by a building and loan or savings and loan association, the percentage within such limits to be determined by such member; a minimum of one per cent (1%) to a maximum of two per cent (2%) of the capital and unassigned surplus of stock insurance companies, except fire insurance companies, the percentage within such limits to be determined by such member; a minimum of one per cent (1%) to a maximum of two per cent (2%) of the unassigned surplus of mutual insurance companies, except fire insurance companies, the percentage within such limits to be determined by such member; one-tenth of one per cent (.1 of 1%) of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(1963, c. 393, ss. 1, 2.)

Editor's Note.—

The 1963 amendment, effective Jan. 1, 1963, rewrote subdivision (2) and paragraph b of subdivision (3). Section 3 of the amendatory act provides that nothing contained in the amendment to this section shall change or affect in any way the provisions of the certificate of incorporation of any existing corporation organized under this chapter unless and until such certificate of incorporation shall be amended as provided in § 53A-9.

As only subdivisions (2) and (3) were affected by the amendment the rest of the section is not set out.

§ **53A-9. Amendment of charter.**—This charter may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled; provided, that no amendment of this charter which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the Secretary of State to examine the corporation or the obligation of the corporation to make reports as provided in § 53A-13, shall be made without amendment of this chapter; and provided, further, that no amendment of this charter which increases the obligation ot a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in § 53A-7, or affects a member's voting rights as provided in § 53A-8, shall be made without the consent of each member affected by such amendment.

Within one hundred and twenty (120) days after any meeting at which amendment of this charter has been adopted, articles of amendment signed and sworn to by the president, treasurer and a majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the Secretary of State, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the Secretary of State and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid. (1955, c. 1146, s. 9; 1963, c. 393, s. 3½.)

Editor's Note.—

The 1963 amendment, effective Jan. 1, 1963, substituted the words and figures "one hundred and twenty (120)" for the word "thirty" near the beginning of the second paragraph.

Chapter 54.

Co-Operative Organizations.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

Article 3.

Loans.

Sec.
54-21.3. County and municipal bonds as investments.

Article 4.

Under Control of Insurance Commissioner.

54-29. Examinations made; expense paid; test appraisals of collateral for loans.
54-33.2. Power of Commissioner of Insurance to issue rules and regulations.

SUBCHAPTER III. CREDIT UNIONS.

Article 13.

Members and Officers.

54-103. Duties of credit committee; appointment, powers and duties of loan officers.

SUBCHAPTER V. MARKETING ASSOCIATIONS.

Article 19.

Purpose and Organization.

Sec.
54-139. Domestication of foreign co-operative corporations; limitation on use of word "co-operative."
54-142. Application of Business Corporation Act to co-operative associations with capital stock.
54-142.1. Application of Nonprofit Corporation Act to co-operative associations without capital stock.

Article 22.

Merger, Consolidation and Other Fundamental Changes.

54-159. Procedure for merger.
54-160. Procedure for consolidation.
54-161. Approval of merger or consolidation; abandonment.
54-162. Articles of merger or consolidation.
54-163. Effect of merger or consolidation.
54-164. Merger or consolidation of domestic and foreign associations.
54-165. Sale, lease or exchange of assets; mortgage or pledge of assets.
54-166. Rights of objecting members.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

ARTICLE 1.

Organization.

§ 54-5. Form of certificate.

Applied in White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

§ 54-7. Chapter on corporations applicable.

Applied in White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

ARTICLE 3.

Loans.

§ 54-21.3. County and municipal bonds as investments. — Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina are authorized as investments for any savings and loan association incorporated under the laws of this State; provided, that said bonds or other evidences of indebtedness of such counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the

North Carolina Municipal Council, Inc., of not less than ninety (90) points out of one hundred (100) points, and, provided further that the investment by any savings and loan association in such bonds or other evidences of indebtedness shall not exceed three per cent (3%) of the total value of the outstanding shares of such association. (1963, c. 352.)

Article 4.

Under Control of Insurance Commissioner.

§ **54-29. Examinations made; expense paid; test appraisals of collateral for loans.**—If at any time the Insurance Commissioner has good reason to think that the standing and responsibility of any building and loan association or company doing business in this State, or its mode of business, is of a doubtful character, or in his discretion whenever he deems it prudent to do so, it shall be his duty to examine and investigate everything relating to the business of such company, and to that end he is hereby authorized, if he deem it advisable, to appoint a suitable and competent person to make such investigation, who shall file with the Insurance Commissioner a full report of his finding in such case. The expenses and cost of such examination shall be defrayed by the company or association subjected to investigation, and each company or association doing business in this State shall stipulate in writing, to be filed with the Insurance Commissioner, that it will pay all reasonable cost and expenses of such examination when it shall become necessary. The Insurance Commissioner whenever he deems it advisable, may direct the making of test appraisals of real estate and other collateral securing loans made by savings and loan associations doing business in this State, and where he deems advisable, employ competent appraisers, or prescribe a list from which competent appraisers may be selected, for the making of such appraisals by the Insurance Commissioner, or in a manner prescribed by the Insurance Commissioner, and do any and all other acts incident to the making of such test appraisals. The expense and cost of such test appraisals shall be defrayed by the company or association subjected to the test appraisals, and each company or association doing business in this State shall pay all reasonble costs and expenses of such test appraisals when it shall be directed. (1905, c. 435, ss. 14, 15; Rev., s. 3897; 1919, c. 179, s. 4; C. S., s. 5190; 1963, c. 353.)

Editor's Note. — The 1963 amendment added the last two sentences.

§ **54-33.2. Power of Commissioner of Insurance to issue rules and regulations.**—Whenever in his judgment it may appear to be advisable, the Insurance Commissioner of this State is empowered to issue such rules, instructions and regulations as may be necessary or incident to the proper discharge of his duties and powers as to savings and loan associations for the supervision and regulation of said associations and for the protection of the public investing in said savings and loan associations. (1963, c. 1121.)

SUBCHAPTER III. CREDIT UNIONS.

Article 11.

Powers of Credit Unions.

§ **54-87. Loans.**—(a) To Members.—A credit union may lend to its members for such purposes and upon such security and terms as the bylaws shall provide and the credit committee shall approve; but a credit union may make unsecured individual loans not in excess of seven hundred fifty dollars ($750.00) when bylaws authorizing such loans shall be first approved by the Superintendent of Credit Unions: Provided, however, that no member shall be permitted to borrow in excess of two hundred dollars ($200.00) or ten per centum (10%) of the total paid in shares of the credit union, whichever is greater. An endorsed note shall be deemed to be security within the meaning of this section. (1961, c. 1187, s. 1.)

Editor's Note.—

Prior to the 1961 amendment it was provided in subsection (a) as follows: "but security must be taken for any loan in excess of four hundred dollars." As only subsection (a) was affected by the amendment the rest of the section is not set out.

ARTICLE 13.

Members and Officers.

§ 54-103. Duties of credit committee; appointment, powers and duties of loan officers.—The credit committee shall meet as often as may be required after due notice has been given to each member. The credit committee shall approve every loan or advance made by the corporation to members, except as hereinafter provided in this section. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of the committee who were present when it was considered, who shall constitute at least a majority of the committee, but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. When authorized by bylaws approved by the Superintendent of Credit Unions, the credit committee, with the approval of the board of directors, may appoint one or more loan officers, and delegate to him or them the power to approve loans up to the unsecured limit, or in excess of such limit if such excess is fully secured by unpledged shares in the credit union. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him within seven (7) days of the date of filing of the application therefor. All loans not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 2.)

Editor's Note.—The 1961 amendment rewrote this section.

SUBCHAPTER V. MARKETING ASSOCIATIONS.

ARTICLE 19.

Purpose and Organization.

§ 54-130. Definitions and nature.—As used in this subchapter—

(1) Agricultural Products.—The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products;

(2) Association.—The term "association" means
  a. Any corporation organized under this subchapter; or
  b. Any foreign corporation which
    1. Is organized under any general or special act of another State or the District of Columbia as a co-operative association for the mutual benefit of its members and other patrons,
    2. Confines its operations in this State to the purposes specified in, and restricts the return on the stock or membership capital and the amount of its business with

nonmembers to the limits placed thereon by, this subchapter for corporations organized hereunder, and
3. Is authorized to transact business in this State pursuant to G. S. 54-139.

(3) Charter.—The term "charter" includes the original articles of incorporation, together with all amendments thereto and articles of merger or consolidation.

(4) Member.—The term "member" shall include actual members of associations without capital stock and holders of stock in associations organized with capital stock; and

(5) Person.—The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized or domesticated hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This subchapter shall be referred to as the "Co-operative Marketing Act." (1921, c. 87, s. 2; C. S., s. 5259(b); 1935, c. 436, s. 1; 1963, c. 1168, ss. 1-3.)

Editor's Note.—

The 1963 amendment rewrote subdivision (2), inserted present subdivision (3) and renumbered former subdivisions (3) and (4) as (4) and (5), and inserted the words "or domesticated" near the beginning of the next-to-last paragraph.

§ **54-134. Articles of incorporation.**—Each association formed under this subchapter must prepare and file articles of incorporation, setting forth:

(1) The name of the association.

(2) The purposes for which it is formed.

(3) The place where its principal business will be transacted.

(4) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually.

(5) The names and addresses (not less than five) of those who are to serve as directors for the first term or until the election of their successors.

(6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the article shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and this association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three fourths of the members.

(7) If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.

In addition to the foregoing, the petition for articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; provided that nothing set forth in this paragraph shall be construed as limiting any of the rights or powers otherwise given to such associations.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgements of deeds and conveyances; and shall be filed as provided in G. S. 55A-4; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the chief of the division of markets. (1921, c. 87, s. 8; C. S., s. 5259(f); 1935, c. 230, ss. 3, 4; 1963, c. 1168, ss. 4, 5.)

Editor's Note.—

The 1963 amendment rewrote subdivision (4) and substituted "as provided in G. S. 55A-4" for "in accordance with the provisions of the general corporation law of this State" in the last paragraph.

§ **54-135. Amendments to articles of incorporation.**—(a) An association may amend its charter from time to time in any and as many respects as may be desired, so long as its charter as amended contains only such provisions as are lawful under this subchapter.

(b) Amendments to the charter shall be made as follows: The board of directors shall by a vote of not less than two thirds of all of the members of the board, adopt a resolution approving the proposed amendment or amendments and directing that the proposed amendment or amendments be submitted to a vote at a meeting of members, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or amendments, or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this subchapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least a majority of the votes entitled to be cast by members present or represented by proxy at such meeting.

(c) The articles of amendment shall set forth:

(1) The name of the association;

(2) The amendment or amendments so adopted;

(3) A statement setting forth the date of the meeting of the board of directors at which the amendment or amendments were approved by the board, that a quorum was present at such meeting, and that such approval received a vote of not less than two thirds of all the members of the board;

(4) A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least a majority of the votes entitled to be cast by members present or represented by proxy at such meeting.

(5) The articles of amendment shall be executed by the association and shall be filed all as provided in G. S. 55A-4.

(6) A certified copy of the articles of amendment shall be filed with the chief of the division of markets. (1921, c. 87, s. 9; C. S., s. 5259(g); 1935, c. 230, s. 5; 1963, c. 1168, s. 6.)

Editor's Note.—

The 1963 amendment rewrote this section.

§ **54-136. Bylaws.**—Each association incorporated under this subchapter must, within thirty (30) days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this subchapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed bylaw or bylaws shall have been given, is sufficient to adopt or amend the bylaws. Each association under its bylaws may also provide for any or all of the following matters:

(1) The time, place, and manner of calling and conducting its meetings.

(2) The number of stockholders or members constituting a quorum.

(3) The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form, and effects of such votes.

(4) The number of directors constituting a quorum.

(5) The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and the mode and manner of giving notice thereof.

(6) Penalties for violations of the bylaws.

(7) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him, and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and the time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors.

In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association, and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

Notwithstanding the foregoing provisions of this section, any association may amend its articles of incorporation to provide that thereafter any bylaw or bylaws of the association may be amended or repealed, or by any new bylaw may be adopted, either by the members or by the board of directors, but if the members amend any bylaw or bylaws or adopt any new bylaw or bylaws, such bylaw or bylaws shall not thereafter be amended or repealed by the board of directors, and if the members repeal any bylaw or bylaws, such bylaw or bylaws shall not be readopted by the board of directors; provided, however, that no bylaw shall be adopted by the board of directors which shall require a higher number or percentage of members to be present or represented at a members' meeting for the purpose of constituting a quorum, or a higher number or percentage of such quorum to take action, than was the case before the power to alter, amend, or repeal the bylaws was conferred upon the board of directors. (1921, c. 87, s. 10; C. S., s. 5259(h); 1935, c. 230, s. 6; 1963, c. 1168, s. 7.)

Editor's Note.—

The 1963 amendment added the last paragraph.

§ **54-139. Domestication of foreign co-operative corporations; limitation on use of word "co-operative."**—(a) A foreign corporation that can qualify as an association, as defined in G. S. 54-130 (2) (b) (1) and (2), may, under the provisions of article 8, chapter 55A, if it be a nonstock corporation, or under the provisions of article 10, chapter 55, if it be a stock corporation, be authorized to transact business in this State.

(b) No person other than an association organized under this subchapter, or a foreign corporation domesticated pursuant to subsection (a) of this section, or an electric or telephone membership corporation domesticated pursuant to G. S. 117-28, shall be entitled to organize, domesticate, or transact business in this State if the corporate or other business name or title of such person contains the word "co-operative." (1921, c. 87, s. 21; C. S., s. 5259(k); 1963, c. 1168, s. 8.)

Editor's Note.—The 1963 amendment rewrote this section, which formerly related only to limitation on the use of the word "co-operative."

§ **54-142. Application of Business Corporation Act to co-operative associations with capital stock.**—The provisions of the Business Corporation Act (chapter 55 of the General Statutes) shall apply, so far as appropriate, to every co-operative association with capital stock heretofore or hereafter organized or domesticated under this subchapter, except where the provisions of that Act are in conflict with or inconsistent with the express provisions of this subchapter. (1921, c. 87, s. 28; C. S., s. 5259(o); 1963, c. 1168, s. 9.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **54-142.1. Application of Nonprofit Corporation Act to co-operative associations without capital stock.**—The provisions of the Nonprofit Corporation Act (chapter 55A of the General Statutes) shall apply, so far as appropriate, to every co-operative association without capital stock heretofore or hereafter organized or domesticated under this subchapter, except where the provisions of that Act are in conflict with or inconsistent with the express provisions of this subchapter. (1963, c. 1168, s. 9.)

ARTICLE 20.

Members and Officers.

§ **54-145. Members.**—(a) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock, only to persons engaged in the production of agricultural products, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder. (1921, c. 87, s. 7; C. S., s. 5259(r); 1963, c. 1168, s. 10.)

Editor's Note.—The 1963 amendment deleted the word "the" before the word "agricultural" near the middle of subsection (a) and the words "to be handled by or through the association" following the word "products" where it first appears in subsection (a).

§ 54-146. Directors; election.

(b) The bylaws may provide that one or more directors may be appointed either by the Director of the Agricultural Extension Service or by such public official or public board or commission as may be designated by the bylaws. The directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.
(1963, c. 1168, s. 11.)

Editor's Note.—The 1963 amendment rewrote the first sentence of subsection (b). As the rest of the section was not changed only subsection (b) is set out.

§ 54-148. Stock; membership certificates; when issued; voting; liability; limitation on transfer of ownership.

(g) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products, and such restrictions must be printed upon every certificate of stock subject thereto.
(1963, c. 1168, s. 12.)

Editor's Note.—
The 1963 amendment deleted the word "the" before the word "agricultural" and the words "handled by the association" following the word "products" in subsection (g). As the rest of the section was not changed only subsection (g) is set out.

ARTICLE 21.

Powers, Duties, and Liabilities.

§ 54-157. Breach of marketing contract of co-operative association; spreading false reports about the finances or management thereof; misdemeanor.—Any person or persons, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars ($500) for each such offense: Provided, that this section shall not apply to a bona fide creditor of any member or stockholder of such association, or the agents or attorney of any such bona fide creditor, endeavoring to make collection of the indebtedness, or to any communication, written or oral, between a business company or concern and persons with whom it has an existing contractual relationship which communication relates to the performance of that contractual relationship and duties and responsibilities arising therefrom. (1921, c. 87, s. 25; C. S., s. 5259(dd); 1963, c. 1168, s. 14.)

Editor's Note.—The 1963 amendment added to the proviso at the end of this section the provision as to communications between a business company or concern and persons with whom it has an existing contractual relationship.

Failure of Milk Processor to Deduct Dues from Payments to Producers.—Where a milk processor, purchasing directly from producers, deducts dues from its payments for milk so purchased and remits such dues to the producers' marketing association, but discontinues making such deductions pursuant to written instructions of the producers and thereafter pays the producers in full for the milk purchased, the processor may not be held to have violated this section. Carolina Milk Producers Co-operative, Inc. v. Melville Dairy, Inc., 255 N. C. 1, 120 S. E. (2d) 548 (1961).

Article 22.

Merger, Consolidation and Other Fundamental Changes.

§ 54-159. Procedure for merger.—(a) Any two or more domestic associations organized under this subchapter, either with or without capital stock, may merge into any one of such associations pursuant to a plan of merger approved in the manner provided in this article.

(b) The board of directors of each association shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the association proposing to merge, and the name of the association into which they propose to merge, which is hereinafter designated as the surviving association.

(2) The name which the surviving association is to have, which name may be that of any of the associations involved in the merger or any other available name, subject, however, to the limitations of G. S. 54-139 and 55A-10.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the charter of the surviving association to be effected by such merger.

(5) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1963, c. 1168, s. 13.)

§ 54-160. Procedure for consolidation.—(a) Any two or more domestic associations organized under this subchapter, either with or without capital stock, may consolidate into a new association pursuant to a plan of consolidation approved in the manner provided in this article.

(b) The board of directors of each association shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the association proposing to consolidate, and the name of the new association into which they proposed to consolidate, which is hereinafter designated as the new association. The name of the new association may be that of any of the associations involved in the consolidation or any other available name, subject, however, to the limitations of G. S. 54-139 and 55A-10.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new association, all of the appropriate statements required to be set forth in articles of incorporation for associations organized under this subchapter.

(4) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1963, c. 1168, s. 13.)

§ 54-161. Approval of merger or consolidation; abandonment. — (a) A plan of merger or consolidation shall be adopted in the following manner: The board of directors of each merging or consolidating association shall adopt a resolution approving the proposed plan, and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice of the meeting shall be given to each member entitled to vote at such meeting. The notice shall state that the proposed plan of merger or consolidation will be considered and acted upon at the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. Such notice shall contain a statement, displayed with reasonable prominence, to the effect that objecting members are entitled, upon compliance with G. S. 54-166, including the twenty-day demand requirement, to be paid the fair market value of their stock or other property rights or interest in the association, but failure of the notice to contain such a statement shall not invalidate the merger or consolidation. Each such notice shall be mailed by first-class mail at such a time that not less than ten (10) full days shall elapse between the date of mailing the notice and the date of the meeting, and shall be mailed to the member at his last address as it appears on the records of the association. The proposed plan shall be adopted upon receiving at least two thirds of the votes entitled to be cast by members present at each such meeting where a quorum is present.

(b) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (1963, c. 1168, s. 13.)

§ **54-162. Articles of merger or consolidation.**—(a) Upon such approval, articles of merger or articles of consolidation shall be executed by each association and filed as provided in G. S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the clerk of the superior court of each county wherein the constituent associations have their principal places of business or their registered offices.

(b) The articles of merger or consolidation shall set forth:

(1) The plan of merger or the plan of consolidation; and

(2) A statement setting forth the date of the meeting of the members of each association at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two thirds of the votes entitled to be cast by members present at each such meeting where a quorum was present.

(c) The time when the merger or consolidation is effected is determined by the provisions of G. S. 55A-4. (1963, c. 1168, s. 13.)

§ **54-163. Effect of merger or consolidation.**—When such merger or consolidation has been effected:

(1) The several associations, parties to the plan of merger or consolidation, shall be a single association which, in the case of a merger, shall be that association designated in the plan of merger as the surviving association, and, in the case of a consolidation, shall be the new association provided for in the plan of consolidation.

(2) The separate existence of all associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.

(3) Such surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of an association organized under this subchapter.

(4) Such surviving or new association shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating associations; and all property, real and personal, and all debts due on any account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the associations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single association without further act or deed; and the title to any real estate, or any interest therein, vested in any of such associations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new association shall thenceforth be responsible and liable for all the liabilities, contracts or other obligations, and penalties of each of the associations so merged or consolidated; and any claim

existing or action or proceeding, civil or criminal, pending by or against any of such associations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new association may be substituted in its place; and any judgments rendered against any of the merged or consolidated associations may be enforced against the surviving or new association. Neither the rights of creditors nor any liens upon the property of any merged or consolidated association shall be impaired by such merger or consolidation.

(6) In the case of a merger, the charter of the surviving association shall be deemed to be amended to the extent, if any, that changes in its charter are stated in the plan of merger. In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new association. (1963, c. 1168, s. 13.)

§ 54-164. Merger or consolidation of domestic and foreign associations. — (a) One or more domestic associations organized under this subchapter and one or more foreign corporations engaging in any activity such as is described in G. S. 54-132, and which is a nonprofit co-operative in the sense that the term "nonprofit" is used in G. S. 54-130, may be merged or consolidated into an association of this State or an association or corporation of another state if such merger or consolidation is permitted by the laws of the state under which each such foreign association or corporation is organized.

(b) Each domestic association shall comply with the provisions of this article with respect to the merger or consolidation, as the case may be, of domestic associations, and each foreign association or corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(c) If the surviving or new association or corporation, as the case may be, is an association or corporation of any state other than this State, it shall comply with the provisions of this subchapter with respect to foreign corporations if it is to transact business in this State; and if after the merger or consolidation it transacts no business in this State, the courts of this State shall have jurisdiction in actions to enforce any obligation of any constituent association of this State and process therein may be served as provided in G. S. 55-145.

(d) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations, if the surviving or new corporation is to be an association of this State. If the surviving or new association or corporation is to be an association or corporation of any state other than this State, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations except insofar as the laws of such other state provide otherwise.

(e) If the new or surviving association or corporation is not an association of this State, then notwithstanding anything in the foregoing provisions of this section:

(1) The rights of any member of any constituent association that is an association of this State to receive notice of objectors' rights, to file his objection, upon such objection to demand and receive payment of the fair market value of his stock or other property rights or interests in the association, or to avail himself of any equitable relief to which he would be entitled if the surviving or new association or corporation were an association of this State, shall not be impaired; and

(2) The courts of this State shall have jurisdiction in actions to enforce the aforesaid rights against the surviving or new association or corporation regardless of whether or not said association or corporation is otherwise subject to the jurisdiction of the courts of this State

and in any such action service of process may be made in the manner provided in G. S. 55-145 that would be applicable if said association or corporation were transacting business in this State. (1963, c. 1168, s. 13.)

§ **54-165. Sale, lease or exchange of assets; mortgage or pledge of assets.**—(a) A sale, lease, or exchange of all, or substantially all, the property and assets of an association organized under the provisions of this subchapter may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner: The board of directors shall adopt a resolution recommending such sale, lease, or exchange and directing that it be submitted to a vote at a meeting of members, which may be either an annual or a special meeting. Written or printed notice of the meeting shall be given to each member entitled to vote at such meeting. The notice shall state that the proposed sale, lease, or exchange will be considered and acted upon at such meeting, and a statement of the terms of the proposed sale, lease, or exchange, as the case may be, shall be included in or enclosed with such notice. Each such notice shall be mailed by first-class mail at such a time that not less than ten (10) full days shall elapse between the date of mailing the notice and the date of the meeting, and shall be mailed to the member at his last address as it appears on the records of the association. The proposed sale, lease, or exchange, as the case may be, shall be adopted upon receiving at least two thirds of the votes entitled to be cast by members present at the meeting, if a quorum is present.

(b) A mortgage or pledge of, or any other security interest in, all or any part or parts of the property of the association may be made by authority of the board of directors of the association without authorization of the members, unless otherwise provided in the charter or bylaws adopted by the members. (1963, c. 1168, s. 13.)

§ **54-166. Rights of objecting members.**—(a) Any member of an association effecting a merger or consolidation may give to the association prior to or at the meeting of the members to which the proposal of merger or consolidation is submitted to a vote, written notice that he objects to such proposal. Within twenty (20) days after the date on which the vote was taken, such member may, unless he votes in favor of the proposal, make written demand on the association for payment of the fair market value of his stock or other property rights or interest in the association. Such demand shall state the number and class of shares of stock owned by him or the nature and amount of other property rights or interest owned by him in the association. In addition to any other right he may have in law or equity, a member giving such notice shall be entitled, if and when the merger or consolidation is effected, to be paid by the surviving or new association, the fair market value of such stock, or other property rights or interests, as of the day prior to the date on which the vote was taken, subject only to the surrender by him of the certificate or certificates or other evidence of ownership of such stock or other property rights or interests.

(b) If within thirty (30) days after the date upon which the objecting member becomes entitled to payment for such stock or other property rights or interest, the fair market value of such stock or other property rights or interests is agreed upon between the member and the surviving or new association, as the case may be, payment therefor shall be made within sixty (60) days after the agreement, upon surrender of the certificate or other evidence of such property rights or interests, whereupon the member shall cease to have any interest in such stock or other property rights or interests in the association.

(c) If within the thirty-day period mentioned in subsection (b) of this section the member and the association do not agree as to the fair market value of such stock or other property rights or interests, the member may, within sixty (60) days after the expiration of the thirty-day period, file a petition in the superior court of the county in which the association has its registered office or principal place of business asking for the appointment by the clerk of the superior court of that county of three qualified and disinterested appraisers to appraise the fair market value of such stock or other property rights or interests. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the association at least ten (10) days prior to the hearing of the petition by the court. The award of the appraisers, or a majority of them, if no exceptions be filed thereto within ten (10) days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the member, upon depositing with the court the proper stock certificates or other evidence of such property rights or interests, shall be entitled to judgment against the association for the appraised value thereof as of the day prior to the date on which the vote was taken, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within ten (10) days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in chapter 40 of the General Statutes for the trial of cases under the eminent domain law of this State, and with the same right of appeal to the Supreme Court as is permitted in that chapter. The court shall assess the cost of the proceedings as it shall deem equitable. Upon payment of the judgment the owner of such stock or other property rights or interests shall cease to have any interest in the association and the association shall be entitled to have said stock certificates or other evidence of such property rights or interests surrendered to the association by the clerk of court. Unless the member shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder, but in that event nothing herein shall impair his status as a member.

(d) If in the notices sent to members in connection with the meeting to vote upon a proposed merger or consolidation no reference is made as required by this article to the provisions of this section, any member entitled to but who did not avail himself of the provisions of this section, unless he voted for the proposal, is entitled, if he so demands in writing within one year after the effective date of the merger or consolidation, to recover from the surviving or new association, as the case may be, any damage which he suffered from failure of the association of which he was a member to make the aforesaid reference.

(e) The liability to pay for shares or to pay damages imposed by this section on an association extends to the successor association which acquires the assets of the predecessor, whether by merger or consolidation.

(f) Shares of stock acquired by an association pursuant to payment of the agreed fair market value thereof or to payment of the judgment entered therefor as in this section provided, may be held and disposed of by the association as in the case of other treasury shares.

(g) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving association is the owner of all the outstanding shares of the other association, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the members of the surviving association.

(h) Notwithstanding any of the foregoing provisions of this section, no member of an association effecting a merger or consolidation, who objects thereto and makes written demand for payment of the fair market value of his stock or other property rights or interests in the association, as hereinbefore provided in this section, shall be entitled to such payment at any time prior to the time that he would otherwise be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the charter or the bylaws of the association, in effect on the date of the vote for such merger or consolidation. However, in any case where the owner of such stock or other property rights or interests in the association is not entitled, because of valid provisions of his stock, or because of valid provisions of the charter or bylaws of the association, to payment at the time hereinbefore provided in this section, the fair market value of such stock or other property rights or interest in the association, as of the day prior to the date on which the vote was taken, may be determined in any manner hereinbefore provided in this section, and the amount so determined, without interest, shall be an obligation of the surviving or new association, as the case may be, and shall be due and payable at the time that the owner thereof would be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the charter or the bylaws of the association. (1963, c. 1168, s. 13.)

Chapter 55.

Business Corporation Act.

ARTICLE 1.

General Provisions.

§ 55-1. Title.

Editor's Note.—

For case law survey on business associations, see 41 N. C. Law Rev. 415.

§ 55-2. Definitions.

Quoted in Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1960).

§ 55-3. Applicability of chapter.

Application to Building and Loan Associations.—Building and loan associations have capital stock. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Under this section the right to know the names of their associates for the purpose of conducting an effective campaign in preparation for a stockholders' meeting, is extended to the shareholders of a building and loan association. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

§ 55-3.1. Effect of acquisition of all shares by less than three persons.

Personal liability of stockholder created before the effective date of this section because corporation did not have three shareholders, will not be defeated by virtue of this section. Lester Brothers, Inc. v. Pope Realty & Ins. Co., 250 N. C. 565, 109 S. E. (2d) 263 (1959).

ARTICLE 3.

Formation, Name and Registered Office.

§ 55-12. Corporate name.

Cited in State v. Thornton, 251 N. C. 658, 111 S. E. (2d) 901 (1960).

ARTICLE 4.

Powers and Management.

§ 55-18. Defense of ultra vires.

Applied in Everette v. D. O. Briggs Lumber Co., 250 N. C. 688, 110 S. E. (2d) 288 (1959).

§ 55-22. Loans and guaranties.—(a) Except with the consent of all the shareholders, regardless of their adverse interests or voting rights, or with the consent of the holders of a majority of all the shares outstanding, regardless of limitation on voting rights, other than the shares held by the adversely interested party, a corporation shall not, directly or indirectly, make any loan of money or property to, or guarantee or otherwise secure the obligation of:

(1) Any directors or officers of the corporation; or

(2) Any corporation of which the officers and directors of the lending or securing corporation own more than fifty per cent (50%) of the outstanding securities of any class; or

(3) Any dominant shareholder or any other corporation of which said shareholder is a dominant shareholder, unless that corporation is a subsidiary of the lending or securing corporation; or

(4) Any person upon the security of the shares of any corporation mentioned in subdivisions (2) and (3) of this subsection.

A sale on credit in the ordinary course of business is not a loan within the meaning of this section.

(b) The provisions of this section do not apply to loans, guaranties, or other forms of security extended by banks, industrial banks, building and loan associations, land and loan associations, credit unions or insurance companies, or to loans permitted under any statute regulating any special class of corporations. (1955, c. 1371, s. 1; 1959, c. 1316, s. 6; 1961, c. 198.)

Editor's Note.—

The 1961 amendment rewrote subsection (a).

§ 55-30. Director's adverse interest.

Contracts Fixing Compensation for Services to Be Rendered.—Notwithstanding the fiduciary relationship existing between officers and the corporation which they serve, contracts fixing the amount and method of paying compensation for services to be rendered are not void or voidable per se. Fulton v. Talbert, 255 N. C. 183, 120 S. E. (2d) 410 (1961).

§ 55-32. Liability of directors in certain cases.

Cited in J. G. Dudley Co. v. Commissioner of Internal Revenue, 298 F. (2d) 750 (1962).

§ 55-35. Duty of directors and officers to corporation.

This section is declaratory of the law prior to the Business Corporation Act. Fulton v. Talbert, 255 N. C. 183, 120 S. E. (2d) 410 (1961).

Contracts Fixing Compensation for Services to Be Rendered.—See same catchline under § 55-30.

Proper Allegations in Action for Salaries Not Honestly Earned. — The right of action which accrues for the fixing and taking by one in authority of salaries, bonuses, or other monies not honestly earned and fairly owing is based on fraud. When one seeks to recover for wrongs fraudulently inflicted, he must allege the facts which, if proven, will establish the fraud. It is not sufficient merely to allege as a conclusion that the payments were "exorbitant, unreasonable, and unjust." Fulton v. Talbert, 255 N. C. 183, 120 S. E. (2d) 410 (1961).

§ 55-37. Books and records.

Legislative Intent.—It is not logical to conclude that the legislature, in adopting the Business Corporation Act, intended to require a corporation to keep two sets of books, one for its stockholders, the other for the government, if it wished to compute its taxes on a cash receipt basis. Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1961).

Effect of Act on Accepted Methods of Accounting.—Where a corporation has kept its books for a number of years according to an accepted method of accounting, which system is sufficient in computing its capital and surplus for franchise tax purposes and its income for income tax on a cash receipt basis, the Business Corporation Act does not make mandatory the abandonment of such system or adoption of a new system of accounting by the corporation. Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1960).

Subsection (a) (3) of this section is supplemented by § 55-64. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Application to Building and Loan Associations.—Subsection (a) (3) of this section and § 55-64 apply to building and loan associations. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Common-Law Right of Shareholder to Inspect Records.—At common law stockholders in private corporations have the right to make reasonable inspection of a corporation's books to assure themselves of efficient management. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Is Not Abridged but Enlarged by Statute. — The explanatory comment accompanying the bill which became the Business Corporation Act makes it clear that the associates and the extent of their holdings was not abridged but enlarged. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Mandamus to Require Disclosure of Names, Addresses and Holdings of Shareholders.—Shareholders in a building and loan association were entitled to a writ of mandamus, requiring the association and its officers to provide plaintiffs an opportunity to inspect the records of the association to ascertain the names, addresses, and number of shares held by each shareholder so that plaintiffs might solicit proxies for use at shareholders' meetings. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

ARTICLE 5.

Corporate Finance.

§ 55-46. Consideration for shares.

Quoted in Short v. Commissioner of Internal Revenue, 302 F. (2d) 120 (1962).

§ 55-49. Surplus, net profits and valuation of assets.

Quoted in Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1960).

§ 55-52. Acquisition by a corporation of its own shares.

(c) Subject to the provisions of subsections (e) and (f) of this section, a corporation may, by the action of its board of directors, purchase and pay for its shares, but only out of surplus and only in the following cases:

(1) Pro rata from all its shareholders or all of a class of shareholders.

(2) On an organized securities exchange, if the board of directors shall have obtained authorization so to purchase, within a period of one year preceding the purchase, by the vote of the holders of a majority of the shares of the class to be purchased, after full disclosure to them of the specific purpose of the proposed purchase.

(3) From any shareholder of any class, if the board of directors shall have obtained authorization so to purchase, within a period of one year preceding the purchase, by a vote of a majority of the holders of the class of shares of the corporation which are entitled to vote, after full disclosure to the holders of the class of shares entitled to vote of the

specific purpose of the proposed purchase, together with a statement of the class of shares proposed to be purchased. Authorization of the stockholders shall not be required for each specific purchase, provided the total number of shares purchased shall not exceed the maximum number of shares authorized in the authorization of the stockholders.

(4) From any shareholder in the exercise of the corporation's right to purchase the shares pursuant to restrictions upon the transfer thereof.

(5) In connection with stabilizing operations authorized by the Securities and Exchange Commission or other regulatory authority.

(6) From any shareholder shares which at the time are listed and traded on a securities exchange regulated or supervised by the Securities and Exchange Commission or other regulatory authority of the United States government.

(1963, c. 666.)

Editor's Note.—

The 1963 amendment added subdivision (6) to subsection (c). As the rest of the section was not changed only subsection (c) is set out.

ARTICLE 6.

Shareholders.

§ 55-54. Liability of shareholders for receiving unlawful payments.

Cited in J. G. Dudley Co. v. Commmissioner of Internal Revenue, 298 F. (2d) 750 (1962).

§ 55-64. Voting list.

Cross Reference.—As to mandamus to require disclosure of names, addresses and holdings of shareholders, see note to § 55-37.

Section Supplements § 55-37.—Section 55-37 (a) (3) is supplemented by § 55-64. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

Application to Building and Loan Associations.—This section and § 55-37 (a) (3) apply to building and loan associations. White v. Smith, 256 N. C. 218, 123 S. E. (2d) 628 (1962).

§ 55-67. Voting of shares.

(c) Except where some inconsistent agreement exists for choosing directors, valid under the provisions of G. S. 55-73, at each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares standing of record in his name for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates. This right of cumulative voting shall not be exercised unless some shareholder or proxy holder announces in open meeting, before the voting for directors starts, his intention so to vote cumulatively; and if such announcement is made, the chair shall declare that all shares entitled to vote have the right to vote cumulatively and shall announce the number of shares present in person and by proxy, and shall thereupon grant a recess of not less than one hour nor more than four hours, as he shall determine, or of such other period of time as is unanimously then agreed upon. Stockholders in any corporation now in existence under a charter which does not grant the right of cumulative voting may not exercise this right of cumulative voting when at the time of election the stock transfer book of such corporation discloses, or it otherwise appears, that there is no stockholder who owns or controls more than one fourth of the voting stock of such corporation. Shares represented at a meeting by a revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares "controlled" within the meaning of this subsection. (Rev., ss. 1183, 1184; 1907, c. 457, s. 1; 1909, c. 827, s. 1; C. S., s. 1173; 1945, c. 635; G. S., s. 55-110; 1951, c. 265, s. 2; 1953, c. 722; 1955, c. 1371, s. 1; 1959, c. 768; c. 1316, s. 23; 1963, c. 1065.)

Editor's Note.—

The 1963 amendment added the last sentence to subsection (c). As only subsection (c) was affected by the amendment, the rest of the section is not set out.

§ 55-72. Voting trust.

(d) A voting trust created under the provisions of this section may be extended or otherwise amended at any time during its term by an agreement of amendment signed by the trustee and by all the trust certificate holders, except that the period covered by the voting trust agreement may not be extended by the agreement of amendment to a date which is more than ten (10) years after the effective date of the amendment. An executed copy of the agreement of amendment shall be deposited by the trustee with the corporation at its registered office and the agreement of amendment shall become effective at the time an executed copy thereof is so deposited. (1955, c. 1371, s. 1; 1963, c. 1233.)

Editor's Note.—The 1963 amendment added subsection (d). Only subsection (d) is set out.

ARTICLE 9.

Dissolution and Liquidation.

§ 55-116. Voluntary dissolution by directors.

Cited in J. G. Dudley Co. v. Commissioner of Internal Revenue, 298 F. (2d) 750 (1962).

§ 55-119. Procedure after filing articles of dissolution.

Editor's Note.—

The words "and objecting shareholder" in line two of subsection (b) of this section in the Replacement Volume should read "an objecting shareholder."

§ 55-122. Involuntary dissolution in action by Attorney General.

Cited in Starbuck v. Havelock, 252 N. C. 176, 113 S. E. (2d) 278 (1960).

ARTICLE 10.

Foreign Corporations.

§ 55-131. Right to transact business.

Facts held to constitute more than "soliciting or procuring orders" requiring acceptance without the State. See Dumas v. Chesapeake & O. R. Co., 253 N. C. 501, 117 S. E. (2d) 426 (1960).

§ 55-144. Suits against foreign corporations transacting business in the State without authorization.

This section and § 55-146 apply exclusively to foreign corporations. Whether analogous statutes applicable to nonresident unincorporated associations should be enacted is for legislative determination. Melton v. Hill, 251 N. C. 134, 110 S. E. (2d) 875 (1959).

§ 55-145. Jurisdiction over foreign corporations not transacting business in this State.

Presence in this State has never been doubted when the activities of the corporation there have not only been continuous and systematic, but have also given rise to the liabilities sued on, even though no consent to be sued or authorization to accept service has been given. Babson v. Clairol, Inc., 256 N. C. 227, 123 S. E. (2d) 508 (1962).

Mere Fact of Manufacture Insufficient for Service of Process.—The mere fact that a foreign corporation was the manufacturer of an implement which caused injury to a resident of this State because of alleged defect or absence of safety device, is alone an insufficient predicate for service of process upon such corporation under subsection (a), subdivisions (3) and (4), the implement having been purchased by a resident of this State from an independent contractor and distributor of another state. Moss v. Winston-Salem, 254 N. C. 480, 119 S. E. (2d) 445 (1961).

§ 55-146. Service on foreign corporations by service on Secretary of State.

This section and § 55-144 apply exclusively to foreign corporations. Whether analogous statutes, applicable to nonresident unincorporated associations, should be enacted, is for legislative determination. Melton v. Hill, 251 N. C. 134, 110 S. E. (2d) 875 (1959).

Service on the Secretary of State is sufficient to bring into court a foreign corporation if it does not have a process agent and is doing business in this State. Babson v. Clairol, Inc., 256 N. C. 227, 123 S. E. (2d) 508 (1962).

Applied in United States v. Tug Parris Island, 215 F. Supp. 149 (1963).

Cited in Dow Chemical Co. v. Metlon Corp., 281 F. (2d) 292 (1960); Moss v. Winston-Salem, 254 N. C. 480, 119 S. E. (2d) 445 (1961).

ARTICLE 13.

Miscellaneous Provisions.

§ 55-165. Interrogatories by Secretary of State.

Cited in Good Will Distributors, Inc. v. Currie, 251 N. C. 120, 110 S. E. (2d) 880 (1959)

Chapter 55A.

Non-Profit Corporation Act.

ARTICLE 6.

Fundamental Changes.

§ 55A-42. Effect of merger or consolidation.

When Separate Existence of Consolidating Corporations Terminated.—If a consolidation agreement is valid, upon the filing thereof in the office of the Secretary of State the separate existence of each of the consolidating corporations is terminated. Adams v. Flora Macdonald College, 251 N. C. 617, 111 S. E. (2d) 859 (1960).

ARTICLE 7.

Dissolution and Liquidation.

§ 55A-50. Involuntary dissolution in action by Attorney General.

Cited in Starbuck v. Havelock, 252 N. C. 176, 113 S. E. (2d) 278 (1960).

ARTICLE 10.

Miscellaneous Provisions.

§ 55A-86. Action by members without a meeting.—(a) Any action required by this chapter to be taken at a meeting of the members or directors of the corporation, or any action which may be taken at a meeting of the members or directors, or of a committee of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or a majority of the directors, or a majority of the members of the committee of directors, as the case may be. Provided, however, this shall not apply whenever the bylaws of a corporation specifically require that such action be by a unanimous vote.

(b) Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this chapter. (1955, c. 1230; 1963, c. 786.)

Editor's Note. — The 1963 amendment inserted "a majority" in lieu of the word "all" at two places in subsection (a) near the proviso, which was also inserted by the amendment.

Chapter 56.

Electric, Telegraph and Power Companies.

Sec.
56-1 to 56-11. [Repealed.]

§§ 56-1 to 56-11: Repealed by Session Laws 1963, c. 1165, s. 1, effective January 1, 1964.

Editor's Note.—Session Laws 1963, c. 1165, s. 1, amended, revised and rewrote chapters 56, 60 and 62 of the General Statutes and recodified them as a new chapter 62 and a new chapter 74A.

Chapter 57.

Hospital, Medical and Dental Service Corporations.

Sec.
57-3. Hospital, physician and dentist contracts.

Sec.
57-12.1. Medical, dental and hospital service associations and agent to transact business through licensed agents only.

§ 57-1. Regulation and definition; application of other laws; profit and foreign corporations prohibited.—Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term "hospital service plan" as used in this chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term "medical service plan" as used in this chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician.

The term "dental service plan" as used in this chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State. (1941, c. 338, s. 1; 1943, c. 537, s. 1; 1953, c. 1124, s. 1; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service corporations. It also inserted the fourth paragraph and made other changes.

§ **57-3. Hospital, physician and dentist contracts.**—Any corporation organized under the provisions of this chapter may enter into contracts for the rendering of hospital service to any of its subscribers by hospitals approved by the American Medical Association and/or the North Carolina Hospital Association, and may enter into contracts for the furnishing of, or the payment in whole or in part for, medical and/or dental services rendered to any of its subscribers by duly licensed physicians and/or dentists. All obligations arising under contracts issued by such corporations to its subscribers shall be satisfied by payments made directly to the hospital or hospitals and/or physicians and/or dentists rendering such service, or direct to the subscriber or his, her, or their legal representatives upon the receipt by the corporation from the subscriber of a statement marked paid by the hospital(s) and/or physician(s) and/or dentist(s) or both rendering such service, and all such payments heretofore made are hereby ratified. Nothing herein shall be construed to discriminate against hospitals conducted by other schools of medical practice.

On and after January 1, 1956, all certificates, plans or contracts issued to subscribers or other persons by hospital and medical and/or dental service corporations operating under chapter 57 of Volume 2B of the General Statutes shall contain a provision as follows: "After two years from the date of issue of this certificate, contract or plan no misstatements, except fraudulent misstatements made by the applicant in the application for such cerificate, contract or plan, shall be used to void said certificate. contract or plan, or to deny a claim for loss incurred or disability (as therein defined) commencing after the expiration of such two-year period. No claim for loss incurred or disability (as defined in the certificate, contract or plan) commencing after two years from the date of issue of this certificate, contract or plan shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specifically described, effective on the date of loss, had existed prior to the effective date of coverage of this certificate, contract or plan." (1941, c. 338, s. 3; 1943, c. 537, s. 2; 1947, c. 820, s. 1; 1955, c. 850, s. 7; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service corporations.

§ **57-5. Application for certificate of authority or license.**—No corporation subject to the provisions of this chapter shall issue contracts for the rendering of hospital or medical and/or dental service to subscribers, until the Commissioner of Insurance has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the Commissioner of Insurance, containing such information as he shall deem necessary. Each application for such certificate of authority or license, as a part thereof shall be accompanied by duplicate copies of the following documents duly certified by at least two of the executive officers of such corporation:

(1) Certificate of incorporation with all amendments thereto.

(2) Bylaws with all amendments thereto.

(3) Each contract executed or proposed to be executed by and between the corporation and any participating hospital, and/or physicians under the terms of which hospital and/or medical and/or dental service is to be furnished to subscribers to the plan.

(4) Each form of contract, application, rider, and endorsement, issued or proposed to be issued to subscribers to the plan, or in renewal of any of contracts with subscribers to the plan, together with a table of rates charged or proposed to be charged to subscribers for each form of such contract.

(5) Financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation for working capital, the name or names of each contributor and the terms of each contribution. (1941, c. 338, s. 5; 1943, c. 537, s. 3; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service corporations.

§ 57-6. Issuance of certificate.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department of Insurance deems adequate, as provided hereinafter.

(1961, c. 1149.)

Editor's Note.—

The 1961 amendment changed subdivision (3) to extend the application of this section to dental service corporations. Only subdivision (3) is set out.

§ 57-7. Subscribers' contracts; required and prohibited provisions.

(c) Every contract entered into by any such corporation with any subscriber thereof shall be in writing and a certificate stating the terms and conditions thereof shall be furnished to the subscriber to be kept by him. No such certificate form, other than to group subscribers of groups of ten or more certificate holders or those issued pursuant to a master group contract covering ten or more certificate holders shall be made, issued or delivered in this State unless it contains the following provisions, provided, however, groups between five and ten certificate holders complying with and maintaining eligibility status under regulations approved by the Commissioner of Insurance for group enrollment may be cancelled if such participation falls below the minimum participation of five certificate holders; or if the group takes other group hospital, medical or surgical coverage:

(1) A statement of the amount payable to the corporation by the subscriber and the times at which and manner in which such amount is to be paid; this provision may be inserted in the application rather than in the certificate. Application need not be attached to certificate.

(2) A statement of the nature of the benefits to be furnished and the period during which they will be furnished.

(3) A statement of the terms and conditions, if any, upon which the con-

tract may be cancelled or otherwise terminated at the option of either party. Said statement shall be in the following language:

a. "Renewability": Any contract subject to the provisions hereof is renewable at the option of the subscriber unless sufficient notice in writing of nonrenewal is mailed to the subscriber by the corporation addressed to the last address recorded with the corporation.

b. "Sufficient notice" shall be as follows:

1. During the first year of any such contract, or during the first year following any lapse and reinstatement, or re-enrollment, a period of thirty (30) days.
2. During the second and subsequent years of continuous coverage, a number of full calendar months most nearly equivalent to one-fourth the number of months of continuous coverage from the first anniversary of the date of issue or reinstatement or re-enrollment, whichever date is more recent, to the date of mailing of such notice.
3. No period of required notice shall exceed two years, and no renewal hereunder shall renew any such contract for any period beyond the required period of notice except by written agreement of the subscriber and corporation.

Any such contract may be modified, terminated or cancelled by the corporation at any time at its option, upon:

a. Nonpayment of fees or dues as required, or

b. Failure or refusal to comply with rate or benefit changes approved by the State Insurance Department after public hearing as outlined in G. S. 57-4.1.

c. Failure or refusal after thirty (30) days' written notice to subscriber to transfer into hospital and medical and/or dental service plan serving the area to which he has changed residence and is eligible for or to which corporation is required to transfer by inter-plan agreement of transfer.

d. The provisions of these amendments to subsection (c) and (c) (3) shall apply only to such contracts as are first issued on and after January 1, 1956.

(4) A statement that the contract includes the endorsements thereon and attached papers, if any, and together with the applications contains the entire contract.

(5) A statement that if the subscriber defaults in making any payment, under the contract, the subsequent acceptance of a payment by the corporation at its home office shall reinstate the contract, but with respect to sickness and injury, only to cover such sickness as may be first manifested more than ten days after the date of such acceptance.

(1961, c. 1149.)

Editor's Note.—

The 1961 amendment changed subsection (c) (3) c to extend the application of this section to dental service corporations. Only subsection (c) is set out.

§ **57-8. Investments and reserves.**—No hospital service corporation shall invest in any securities other than securities permitted by the laws of this State for the investment of assets of life insurance companies, banks, trust companies, executors, administrators and guardians.

Every such corporation after the first full year of doing business after the passage of this chapter shall accumulate and maintain, in addition to proper reserves for current administrative liabilities and whatever reserves are deemed adequate and proper by the Commissioner of Insurance for unpaid hospital and/or medical and/or dental bills, and unearned membership dues, a special contingent surplus or reserve at the following rates annually of its gross annual collections from membership dues, exclusive of receipts from cost plus plans, until said reserve shall equal three times its average monthly expenditures for hospital and/or medical and/or dental claims and administrative and selling expenses:

(1) Ist $200,000.00 ....4%
(2) Next $200,000.00 ....2%
(3) All above $400,000.00 ....1%

Any such corporation may accumulate and maintain a contingent reserve in excess of the reserve hereinabove provided for, not to exceed an amount equal to six times the average monthly expenditures for hospital and/or medical and/or dental claims and administrative and selling expenses.

In the event the Commissioner of Insurance finds that special conditions exist warranting an increase or decrease in the reserves or schedule of reserves, hereinabove provided for, it may be modified by the Commissioner of Insurance accordingly, provided however, when special conditions exist warranting an increase in said schedule of reserves, said schedule shall not be increased by the Commissioner of Insurance until a reasonable length of time shall have elapsed after notice of such increase. (1941, c. 338, s. 8; 1943, c. 537, s. 5; 1947, c. 820, s. 5; 1961, c. 1149.)

Editor's Note.—
The 1961 amendment extended the application of this section to dental bills and claims.

§ **57-11. Expenses.**—All acquisition expenses in connection with the solicitation of subscribers to such hospital and/or medical and/or dental service plan and administration costs including salaries paid to officers of the corporations, if any, shall at all times be subject to inspection by the Commissioner of Insurance. (1941, c. 338, s. 11; 1943, c. 537, s. 6; 1961, c. 1149.)

Editor's Note.—
The 1961 amendment extended the application of this section to dental service plans.

§ **57-12. Licensing of agents.**—Every agent of any hospital service corporation authorized to do business in this State under the provisions of this chapter shall be required to obtain annually from the Commissioner of Insurance a license under the seal of his office showing that the company for which he is agent is licensed to do business in this State and that he is an agent of such company and duly authorized to do business for it. And every such agent, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit hospital service. For said license, each agent shall annually pay the sum of one ($1.00) dollar. Before a license is issued to an agent, hereunder, the agent and the company for which he desires to act, shall apply for the license on forms to be prescribed by the Commissioner of Insurance, and before he issues a license to such agent, the Commissioner of Insurance shall satisfy himself by examination, or otherwise, that the person applying for a license as an agent is a person of good moral character, that he intends to hold himself out in good faith as a hospital and/or medical and/or dental service agent and has sufficient knowledge of the business proposed to be done; that he has not willfully violated any of the insurance laws of the State, and that he is a proper person for such position, and that such license, if issued, shall serve the public's interest. For said examination applicant shall pay the sum of ten ($10.00) dollars: Provided, that where an applicant has already paid the ten ($10.00) dollar examination fee prescribed in § 105-228.7, such applicant shall not be required to pay an additional examination fee. All agents operating as such for a corporation subject to the provisions of this chapter on the date of its ratification are deemed qualified to act as such without the examination herein provided for. Licenses issued hereunder shall be subject to revocation by the Commissioner of Insurance for cause and if any person shall assume to act as an agent or broker without obtaining the license herein provided for, or makes any false statements or representations concerning the said hospital and/or medical and/or dental service, knowingly or willfully, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars for each offense. (1941, c. 338, s. 12; 1943, c. 537, s. 7; 1947, c. 1023, s. 1; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service agents.

§ **57-12.1. Medical, dental and hospital service associations and agent to transact business through licensed agents only.**—No medical and/or dental or hospital service association; nor any agent of any association shall on behalf of such association or agent, knowingly permit any person not licensed as an agent as provided by law, to solicit, negotiate for, collect or transmit a premium for a new contract of medical and/or dental or hospital service certificate or to act in any way in the negotiation for any contract or policy; provided, no license shall be required of the following:

(1) Persons designated by the association or subscriber to collect or deduct or transmit premiums or other charges for medical and/or dental care or hospital contracts, or to perform such acts as may be required for providing coverage for additional persons who are eligible under a master contract.

(2) An agency office employee acting in the confines of the agent's office, under the direction and supervision of the duly licensed agent and within the scope of such agent's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties. (1955, c. 1268; 1961, c. 1149.)

Editor's Note.—The 1961 amendment inserted the words "and/or dental" in the preliminary paragraph and in subdivision (1).

§ **57-16. Cost plus plans.**—Any corporation organized under the provisions of this chapter shall be authorized as agent of any other corporation, firm, group, partnership, or association, or any subsidiary or subsidiaries thereof, municipal corporation, State, federal government, or any agency thereof, to administer on behalf of such corporation, firm, group, partnership, or association, or any subsidiary or subsidiaries thereof, municipal corporation, State, federal government, or any agency thereof, any group hospitalization or medical and/or dental service plan, promulgated by such corporation, firm, group, partnership, or association, or any subsidiary or subsidiaries thereof, municipal corporation, State, federal government, or any agency thereof, on a cost plus administrative expense basis, provided said other corporation, firm, group, partnership, or association, or any subsidiary or subsidiaries thereof, municipal corporation, State, federal government, or any agency thereof shall have had an active existence for at least one (1) year preceding the establishment of such plan, and was formed for purposes other than procuring such group hospitalization and/or medical and/or dental service coverage in a cost plus administrative expense basis, and provided only that administrative costs of such a cost plus plan administered by a corporation organized under the provisions of this chapter, acting as an agent as herein provided, shall not exceed the remuneration received therefor, and provided further that the corporation organized under this chapter administering such a plan shall have no liability to the subscribers or to the hospitals for the success or failure, liquidation or dissolution of such group hospitalization or medical and/or dental service plan and provided further, that nothing herein contained shall be construed to require of said corporation, firm, group, partnership, or association, or any subsidiary or subsidiaries thereof, municipal corporation, State, federal government, or any agency thereof, conformity to the provisions of this chapter if such group hospitalization is administered by a corporation organized under this chapter, on a cost plus expense basis. The administration of any cost plus plans as herein provided, shall not be subject to regulation or supervision by the Commissioner of Insurance. (1941, c. 338, s. 16; 1943, c. 537, s. 9; 1947, c. 820, s. 7; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service plans.

§ **57-18. Construction of chapter as to single employer plans; associations exempt.**—Nothing in this chapter shall be construed to affect or apply to hospital or medical and/or dental service plans which limit their membership to employees and the immediate members of the families of the employees of a single employer or his or its subsidiary or subsidiaries and which plans are operated by such employer of such limited group of the employees; nor shall this chapter be construed to affect or apply to any nonstock, nonprofit medical service association which was, on January first, one thousand nine hundred and forty-three, organized solely for the purpose of, and actually engaged in, the administration of any medical service plan in this State upon contracts and participating agreements with physicians, surgeons, or medical societies, whereby such physicians or surgeons underwrite such plan by contributing their services to members of such association upon agreement with such association as to the schedule of fees to apply and the rate and method of payment by the association from the common fund paid in periodically by the members for medical, surgical and obstetrical care; and such hospital service plans, and such medical service associations as are herein specifically described, are hereby exempt from the provisions of this chapter. The Commissioner of Insurance may require from any such hospital service plan or medical service association such information as will enable him to determine whether such hospital service plan or medical service association is exempt from the provisions of this chapter. (1941, c. 338, s. 18; 1943, c. 537, s. 10; 1947, c. 140; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service plans.

§ **57-19. Merger or consolidation, proceedings for.**—Any two (2) or more hospital and/or medical and/or dental service corporations organized under and/or subject to the provisions of this chapter as determined by the Commissioner of Insurance may, as shall be specified in the agreement hereinafter required, be merged into one of such constituent corporations, herein designated as the surviving corporation, or may be consolidated into a new corporation to be formed by the means of such consolidation of the constituent corporations, which new corporation is herein designated as the resulting or consolidated corporation, and the directors and/or trustees, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect and stating such other facts as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case require, and with such other details as to conversion of certificates of the subscribers as are deemed necessary and/or proper.

Said agreement shall be submitted to the certificate holders of each constituent corporation, at a separate meeting thereof, called for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication once a week for two consecutive weeks in some newspaper published in Raleigh, North Carolina, and in the counties in which the principal offices of the constituent corporations are located, and if no such paper is published in the county of the principal office of such constituent corporations, then said notice shall be posted at the courthouse door of said county or counties for a period of two weeks.

Said printed or posted notices shall be in such form and of such size as the Commissioner of Insurance may approve. A true copy of said notices shall be filed with the Commissioner of Insurance.

Such publication and filing of notices shall be completed at least fifteen (15) days prior to the date set therein for the meeting, and due proof thereof shall be filed with the Commissioner of Insurance at least ten days prior to the date of such meeting.

At this meeting those present in person or represented by proxy shall constitute a quorum and said agreement shall be considered and voted upon by ballot in person or by proxy or both taken for the adoption or rejection of the same; and if the votes of two thirds of those at said meeting voting in person or by proxy shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the president and secretary of each such corporation, under the seal thereof.

The agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each of such corporations under the corporate seals thereof and acknowledged by the president or vice-president of each such corporation before any officer authorized by the laws of this State to take acknowledgment of deeds to be the respective act, deed, and agreement of each of said corporations.

The said agreement shall be submitted to and approved by the Commissioner of Insurance, in advance of the merger or consolidation and his approval thereof shall be indicated by his signature being affixed thereto under the seal of his office.

The Commissioner shall not approve any such plans, unless, after a hearing, he finds that it is fair, equitable to certificate holders and members, consistent with law, and will not conflict with the public interest.

The agreement so certified and acknowledged with the approval of the Commissioner of Insurance noted thereon, shall be filed in the office of the Secretary of State, and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said corporations; and a copy of said agreement and act of consolidation or merger duly certified by the Secretary of State under the seal of his office shall also be recorded, in the office of the clerk of the superior court of the county of this State in which the principal office of the surviving or consolidated corporation is, or is to be established, and in the office of the clerks of the superior courts of the counties of this State in which the respective corporations so merging or consolidating shall have their original certificates of incorporation recorded, and also in the office of the register of deeds in each county in which either or any of the corporations entering into merger or consolidation owns any real estate; and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger. When an agreement shall have been signed, authorized, adopted, acknowledged, approved, and filed and recorded as hereinabove set forth in this section, for all purposes of the laws of this State, the separate existence of all constituent corporations, parties to said agreement, or of all such constituent corporations, except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporation shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, of each of said constituent corporations, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, shall be vested in the corporation resulting from or surviving such consolidation or merger, and all property, rights, privileges, powers, and franchises and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this State, vested in any such constituent corporations shall not revert or be in any way impaired by reason of such consolidation or merger; provided, however, that all rights of creditors and all liens upon the property of either of or any of said constituent corporations shall be preserved, unimpaired, limited in lien to the property affected by such lien at the time of the merger or consolidation, and all debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it; and further provided that notice of any said liens, debts, liabilities, and duties is given in writing to the resulting or surviving corporation within six months after the date of the filing of the agreement of merger in the office of the Secretary of State. All such liens, debts, liabilities, and duties of which notice is not given as provided herein are forever barred. The certificate of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that the changes in its certificates of incorporation are stated in the agreement of merger. All certificates theretofore issued and outstanding by each constituent corporation and in good standing upon the date of the filing of such agreement with the Secretary of State without reissuance thereof by the resulting or surviving corporation shall be the contract and agreement of the resulting or surviving corporation with each of the certificate holders thereof and subject to all terms and conditions thereof and of the agreement of merger filed in the office of the Secretary of State.

Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment as if such consolidation or merger had not taken place, or the corporations resulting from or surviving such consolidation or merger may be substituted in its place.

The liability of such constituent corporations to the certificate holders thereof, and the rights or remedies of the creditors thereof, or persons doing or transacting business with such corporations, shall not, in any way, be lessened or impaired by the consolidation or merger of two or more of such corporations under the provisions of this section, except as provided in this section.

When two or more corporations are consolidated or merged, the corporation resulting from or surviving such consolidation or merger shall have the power and authority to continue any contracts which any of the constituent corporations might have elected to continue. All contracts entered into between any constituent corporations and any other persons shall be and become the contract of the resulting corporations according to the terms and conditions of said contract and the agreement of consolidation or merger.

For the filing of the agreement as hereinabove provided, the Secretary of State is entitled to receive such fees only as he would have received had a new corporation been formed.

Any agreement for merger and/or consolidation as shall conform to the provisions of this section, shall be binding and valid upon all the subscribers, certificate holders and/or members of such constituent corporations, provided only that any subscriber, certificate holder and/or member who shall so indicate his disapproval thereof to the resulting, consolidated or surviving corporation within ninety days after the filing of said agreement with the Secretary of State shall be entitled to receive all unearned portions of premiums paid on his certificate from and after the date of the receipt of the application therefor by the resulting, surviving, or consolidated corporation; each subscriber, certificate holder and/or member who shall not so indicate his or her disapproval of said agreement and said merger within said period of ninety days is deemed and presumed to have approved said agreement and said merger and/or consolidation and shall have waived his or her right to question the legality of said merger and/or consolidation.

No director, officer, subscriber, certificate holder and/or member as such of any such corporation, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, for in any manner aiding, promoting or assisting in the merger or consolidation. (1947, c. 820, s. 8; 1961, c. 1149.)

Editor's Note.—The 1961 amendment extended the application of this section to dental service corporations.

§ 57-20. Commissioner of Insurance determines corporations exempt from this chapter.—The Commissioner of Insurance may require from any corporation writing any hospital service contracts and any corporation writing medical and/or dental service contracts or any or all of them, such information as will enable him to determine whether such corporation is subject to the provisions of this chapter. (1947, c. 820, s. 9; 1961, c. 1149.)

Editor's Note.—The 1961 amendment extended the application of this section to dental service contracts.

Chapter 58.

Insurance.

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SUBCHAPTER I. INSURANCE DEPARTMENT.

ARTICLE 2.

Commissioner of Insurance.

§ 58-6. Salary of Commissioner.—The salary of the Commissioner of Insurance shall be eighteen thousand dollars ($18,000.00) a year, payable in equal monthly installments. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C. S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6.)

Editor's Note.—
The 1963 amendment, effective July 1, 1963, increased the salary from $12,000.00 to $18,000.00.

ARTICLE 3.

General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.

North Carolina Choice-of-Law Rules Control.—The provision of this section that all contracts of insurance on lives in North Carolina shall be subject to the law of

North Carolina seems to mean the whole law of North Carolina, including choice-of-law rules. Lowe's North Wilkesboro Hardware, Inc. v. Fidelity Mut. Life Ins. Co., 206 F. Supp. 427 (1962).

§ 58-30. Statements in application not warranties.

Cited in Jones v. Home Security Life Ins. Co., 254 N. C. 407, 119 S. E. (2d) 215 (1961).

§ 58-39. Revocation, suspension and refusal to renew license.—The license of any insurer, including fraternal orders and societies, may in the discretion of the Commissioner be suspended or revoked or its renewal refused,

(1) Whenever it fails or refuses to comply with any law, order or regulation applicable to it;

(2) Whenever its condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus;

(3) Whenever it has published or made to the Department or to the public any false statement or report;

(4) Whenever it refuses to submit to any examination authorized by law;

(5) Whenever it is found to make a practice of unduly engaging in litigation, or delaying the investigation of claims or the adjustment or payment of valid claims or whenever it fails to acknowledge a claim within sixty (60) days after receiving written notice thereof, provided, such notice contains sufficient information for the insurance company to identify the specific insurance coverage involved. Acknowledgment of the claim shall be made to the claimant or his legal representative advising that the claim is being investigated; or shall be a payment of the claim; or shall be a bona fide written offer of settlement; or shall be a written denial of the claim.

Any such suspension, revocation or refusal to renew a license may also be made applicable to the license of an agent who is a party to such default or improper practice. (1899, c. 54, ss. 66, 75, 112; 1901, c. 391, s. 5; Rev., ss. 4703, 4705; C. S., s. 6297; 1947, c. 721; 1963, c. 1234.)

Editor's Note.—

The 1963 amendment added "or whenever it fails to acknowledge a claim within sixty (60) days after receiving written notice thereof, provided, such notice contains sufficient information for the insurance company to identify the specific insurance coverage involved" at the end of the first sentence of subdivision (5). It also added the second sentence to that subdivision.

§ 58-41. Agent's and adjuster's qualifications. — Before a license is issued to an insurance agent, general agent, or insurance adjuster in this State, the agent, general agent, or adjuster shall apply for license on forms to be prescribed by the Commissioner. In all cases where application is made for the license mentioned herein by an insurance agent or general agent, the company for which the agent or general agent desires to act shall also apply for the license on forms to be prescribed by the Commissioner. Upon the filing of an application of an insurance adjuster there shall also be an application, as above prescribed, by the insurance company for which that adjuster proposes to adjust in the event that the adjuster is to be an employee of that company. Upon the filing of an application of an adjuster who is to work as an employee of any person, firm, or corporation other than an insurance company, then the employer shall make an application on form prescribed by the Commissioner. Before he issues a license to such agent, general agent, or insurance adjuster, the Commissioner shall satisfy himself that such license, if issued, shall serve the public interest and that the person applying for the license as an agent, general agent, or insurance adjuster:

(1) Be twenty-one years of age or over;

(2) Meet residence requirements as follows:

a. For insurance adjusters: Be a bona fide resident of and actually reside in this State except as provided in § 58-51.2.

b. For agents and general agents: Be a bona fide resident of and actually reside in this State for a period of twelve (12) months next preceding the date when he applies for license, except as provided in § 58-43: Provided, however, that the said twelve-month waiting period shall not apply if the applicant for license files a good and sufficient bond of one thousand dollars ($1,000.00) with the Commissioner of Insurance, which bond shall be subject to forfeiture upon a finding by the Commissioner of Insurance that the licensed person or agent has moved his domicile or residence from this State within the period of the year for which license was issued; provided, however, that no such agent shall be required to file more than one bond under this section, irrespective of the number of licenses issued to him or the number of companies he may represent. Upon such forfeiture, the Commissioner of Insurance shall pay said penal amount of such bond to the board of education of the county where the agent resided. The provisions of this paragraph shall also be applicable to the agents of hospital and medical and/or dental service corporations operating under chapter 57 of the General Statutes, as amended. In lieu of the requirements of this paragraph that all agents shall file the bond herein prescribed, all insurance companies licensed to write accident, health or hospitalization insurance in this State may file a blanket bond covering such of their agents who are duly authorized to sell accident, health or hospitalization insurance.

(3) Successfully pass an examination as required under § 58-41.1;

(4) Be a trustworthy person;

(5) Has not willfully violated any of the insurance laws of this State;

(6) Has had special education, training or experience of sufficient duration and extent reasonably to satisfy the Commissioner that he possesses the competence necessary to fulfill the responsibilities of an agent, general agent or adjuster: Provided, that upon the expiration of any license of an agent, general agent, or insurance adjuster, the Commissioner of Insurance may grant a license to such agent, general agent, or insurance adjuster for a period not exceeding twelve months, upon an application of the company desiring to license such agent, or general agent, or upon the application of the employer of such insurance adjuster, and without any application from the agent, general agent, or insurance adjuster, upon such forms and in accordance with such rules as may be determined by the Commissioner of Insurance and upon the payment by either the insurance company or the agent, general agent, or insurance adjuster of the proper fees.

No license may be issued to any agent whose premium writings represented by the premiums on contracts of insurance signed, countersigned, issued or sold by him or the agency employing him for the general public during the preceding year shall not exceed those on insurance signed, countersigned, issued or sold by the agency covering his own property or life and the property or lives of members of his immediate family, his employer, his employees, and stockholders or employees of his employer. This limitation shall not apply to agents originally licensed and duly qualified prior to April 1, 1945.

In addition to the bond requirements of paragraph b of subdivision (2) of this section, all agents licensed to sell accident, health or hospitalization insurance in this State or certificates or service plans of a medical and/or dental service corporation shall be required to file with the Commissioner of Insurance a bond in the amount of five hundred dollars ($500.00), which shall be subject to forfeiture in whole or in part upon a finding made by the Commissioner of Insurance that such agent has wilfully misrepresented the terms of an accident, health or hospitalization insurance policy, or service plan or certificate of a medical and/or dental service corporation, offered for sale; provided, however, that no such agent shall be required to file more than one bond under this section, irrespective of the number of licenses issued to him or the number of companies he may represent. Upon such forfeiture being made final by the Commissioner of Insurance or his authorized deputy, the forfeiture shall be paid to the board of education of the county of the agent's residence. (1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7, c. 166, s. 7; C. S., s. 6299; 1931, c. 185; 1945, c. 458; 1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1953, c. 1043, s. 5; 1955 c. 850, ss. 1, 4; 1957, c. 96; 1961, c. 1149.)

Editor's Note.—

The 1961 amendment extended the application of this section to dental service corporations.

§ **58-42.1. "Twisting" with respect to insurance policies defined; penalties.**—Any insurer, or any agent of any insurer, who shall engage in twisting, as defined in this section, shall be subject to the provisions of §§ 58-37 and 58-38 or §§ 58-44.4 and 58-44.6. As used in this section "twisting" shall mean the willful, material misrepresentation of an insurance contract, whereby an insured is deceived and induced to cancel or terminate insurance in force to such insured's detriment. (1961, c. 823.)

§ **58-53.1. Citizens authorized to procure policies in unlicensed foreign companies.**—(a) What Applicant Must Show.—The Commissioner, upon the annual payment of a fee of twenty dollars, may issue licenses to citizens of this State, subject to revocation at any time, permitting the person named therein to procure policies of insurance on risks in this State in foreign or alien insurance companies not authorized to transact business in the State. Before the person named in such a license may procure any insurance in such companies or on any risks in this State, he must execute and file with the Commissioner an affidavit that he is unable to procure in companies admitted to do business in the State the amount of insurance necessary to protect such risk, and may only procure insurance under such license after he has procured insurance in companies admitted to do business in this State to the full amount which those companies are willing to write on the risk. If the person licensed under the provisions of this section procures insurance on risks of others in such nonadmitted companies he shall stamp or print in not less than ten point regular type and in contrasting color upon the filing face and the first page of each policy so issued the words "This company is not licensed to do business in North Carolina."

(1961, c. 1150, s. 1.)

Editor's Note.—

The 1961 amendment inserted the words "risk" or "risks" for the word "property" in subsection (a). It also struck out the words "or write" and inserted in lieu thereof the words "or print in not less than ten point regular type and in contrasting color." As only subsection (a) was affected by the amendment the rest of the section is not set out.

§ **58-53.3. Tax deducted from premium; reports filed.** — When any person procures insurance on any risk located in this State with an insurance company not licensed to do business in this State, it shall be the duty of such person to deduct from the premium charged on the policy or policies issued for such insurance five per centum of the premium and remit the same to the Commissioner of Insurance of the State, at the same time reporting to the Commissioner of Insurance the name of the company or companies issuing the policy or policies, the location of the risks insured, and the premium charged. The Commissioner of Insurance shall pay the said amounts to the Treasurer of the State. If such report is not made on or before the thirtieth days of July and January of each year for the business done prior to July first and January first preceding, there shall be added to the amount of taxes thereon the sum of one per centum on the first day of each month thereafter. (1915, c. 109, s. 8; C. S., s. 6427; 1945, c. 378; 1961, c. 1150, s. 2.)

Editor's Note.—

The 1961 amendment inserted the words "risk" or "risks" in place of the word "property."

ARTICLE 4.

Insurance Premium Financing.

§ **58-55. Definitions.**—When used in this article:

(1) An insurance premium finance company is hereby defined to be:
  a. Any person engaged, in whole or in part, in the business of entering into insurance premium finance agreements with insureds; or
  b. Any person engaged, in whole or in part, in the business of acquiring insurance premium finance agreements from other insurance premium finance companies.

(2) "Insurance premium finance agreement" means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent, in payment of premiums on an insurance contract, together with a service charge as authorized and limited by this article. (1963, c. 1118.)

Editor's Note.—The act inserting this article became effective Oct. 1, 1963.

§ **58-56. License required; fees.**—(a) No person except an authorized insurer shall engage in the business of an insurance premium finance company without obtaining a license from the Commissioner, as provided in this article.

(b) Application for license required under this article shall be in writing, and in the form prescribed by the Commissioner.

(c) When an applicant has more than one office, separate applications for license shall be made for each such office.

(d) At the time of filing an application for a license, the applicant shall pay to the Commissioner the license fee. Upon original application or upon application subsequent to denial of application, or revocation, suspension or surrender of a license, an examination fee may be required.

(e) The license fee for each license year or part thereof shall be two hundred dollars ($200.00) for each office where the business of an insurance premium finance company is conducted. The examination fee, when required by this section, shall be one hundred dollars ($100.00) per office, except that, when an applicant files applications for licenses for three (3) or more offices at the same time, the total examination fee for all the applications shall be three hundred dollars ($300.00). (1963, c. 1118.)

§ **58-56.1. Exceptions to license requirements.**—(a) Any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, installment paper dealers, auto finance companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations, organized under the laws of North Carolina or any person, firm or corporation subject to the provisions of the North Carolina Consumer Finance Act and the North Carolina Motor Vehicle

Dealers and Manufacturers Licensing Law, article 12, chapter 20, of the General Statutes of North Carolina are exempt from the provisions of this article.

(b) An insurance company duly licensed in this State may make an installment payment charge as set forth in the rate filings and approved by the Commissioner and are thereby exempt from the provisions of this article. (1963, c. 1118.)

§ 58-56.2. Issuance or refusal of license; duration; renewal; one office per license; display of license; notice of change of location.—(a) Within sixty (60) days after the filing of an application for a license accompanied by payment of the fees for license and examination, the Commissioner shall issue the license or may refuse to issue the license and so advise the applicant. The applicant shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation and protection to the public offered by the person filing such application. Such license to engage in business in accordance with the provisions of this article at the location specified in the application shall be executed in duplicate by the Commissioner and he shall transmit one copy to the applicant and retain a copy on file.

(b) If the Commissioner refuses to issue a license, he shall notify the applicant of the denial, return to the applicant the sum paid as a license fee, but retain the examination fee to cover the cost of examining the applicant.

(c) Each license issued hereunder shall remain in full force and effect until the last day of June unless earlier surrendered, suspended, or revoked pursuant to this article, and may be renewed for the ensuing license year upon the filing of an application and conforming with G. S. 58-56, but subject to all of the provisions of this article. If an application for a renewal of a license is filed with the Commissioner before July 1st of any year, the license sought to be renewed shall be continued in full force and effect either until the issuance by the Commissioner of the renewal license applied for or until five (5) days after the Commissioner refuses to issue such renewal license under the provisions of this article.

(d) Only one (1) office may be maintained under each license, but more than one (1) license may be issued to the same licensee pursuant to this article.

(e) Such license shall state the name and address of the licensee and shall at all times be prominently displayed in the office of the licensee and shall not be transferable or assignable.

(f) Before any licensee changes any office of his to another location, he shall give written notice thereof to the Commissioner. (1963, c. 1118.)

§ 58-56.3. Grounds for refusal, suspension or revocation of licenses; surrender of licenses; reinstatement.—(a) The Commissioner may forthwith deny, suspend, revoke, or refuse to renew or continue any license hereunder if he shall find that:

(1) The licensee has failed to pay the annual license fee or any sum of money lawfully demanded under authority of any section of this article or has violated or failed to comply with any demand, ruling, provision or requirement of the Commissioner lawfully made pursuant to or within the authority of this article.

(2) Any fact or condition exists which, if it had been known to exist at the time of the original application, would have caused the original license to have been refused.

(b) The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; or if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one (1) office, operated by such licensee, he shall revoke or suspend all of the licenses issued to such licensee or such number of licenses as such grounds apply to, as the case may be.

(1) Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(2) No revocation or suspension or surrender of any license shall impair or affect the obligation of any insured under any lawful insurance premium finance agreement previously acquired or held by the licensee.

(3) Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, suspended, or expires in accordance with the provisions of this article; but the Commissioner shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this article. (1963, c. 1118.)

§ **58-57. Investigations; hearings.**—For the purpose of conducting investigations and holding hearings on insurance premium finance companies, the Commissioner shall have the same authority as that vested in him by G. S. 58-9.2 and 58-44.6. (1963, c. 1118.)

§ **58-57.1. Licensee's books and records; reports; refusing to exhibit records; making false statements.**—(a) The licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three (3) years after making the final entry in respect to any insurance premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement. The Commissioner may require of licensees under oath and in the form prescribed by him regular or special reports as he may deem necessary to the proper supervision of licensees under this article.

(b) Any person who shall refuse, on demand, to exhibit to the Commissioner of Insurance or to any deputy, or person acting with or for the Commissioner, the books, accounts or records as above provided, or who shall knowingly or willfully make any false statement in regard to the same shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1963, c. 1118.)

§ **58-57.2. Excessive insurance premium finance charges; penalty.**—The knowingly taking, receiving, reserving, [or] charging a greater insurance premium finance charge than that authorized in this article shall be held and adjudged a forfeiture of the entire insurance premium finance charge which the insurance premium finance agreement carries with it, or which has been agreed to be paid thereon; and if a greater insurance premium finance charge has been paid, the person paying the same or his legal representative may recover from the insurance premium finance company twice the entire amount of the insurance premium finance charge thus paid if action therefor is brought within two (2) years from the time of such payment. (1963, c. 1118.)

§ **58-57.3. Rebates and inducements prohibited; assignment of insurance premium finance agreements.**—(a) No insurance premium finance company, and no employee of such a company shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or any employee of an insurance agent, or to any other person, or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly, other than an article of merchandise not exceeding one dollar ($1.00) in value which shall have thereon the advertisement of the insurance premium finance company; but an insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement provided that it conforms to this article in all respects, from another insurance premium finance company with recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon and such terms and conditions shall be subject to the approval of the Commissioner.

(b) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of an insurance premium finance agreement as against creditors or subsequent purchasers, pledges, or encumbrancers of the assignor. (1963, c. 1118.)

§ 58-58. Filing and approval of forms and service charges.—(a) No insurance premium finance agreement form or related form shall be used in this State unless it has been filed with and written approval given by the Commissioner.

(b) In addition each insurance premium finance company shall file with the Commissioner the service charge rate plan to be used in insurance premium financing including all modifications of service charges to be paid by the insured or others under the insurance premium finance agreement. Such filings shall not be used in this State until written approval has been given by the Commissioner. (1963, c. 1118.)

§ 58-58.1. Form, contents and execution of insurance premium finance agreements.—(a) An insurance premium finance agreement shall be in writing, dated, signed by the insured, and the printed portion thereof shall be in at least eight point type. It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(1) At its top, the words "INSURANCE PREMIUM FINANCE AGREEMENT" or similar wording in at least ten point bold type; and the insurance premium finance company license number shall also appear, and:

(2) A notice in at least eight point bold type, reading as follows: "NOTICE":
  a. Do not sign this agreement before you read it.
  b. You are entitled to a copy of this agreement.
  c. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

(b) An insurance premium finance agreement shall:

(1) Contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance contract, the premiums for which are advanced or to be advanced under the agreement, and the amount of the premiums for such insurance contract; and

(2) Set forth the following items:
  a. The total amount of the premiums;
  b. The amount of the down payment;
  c. The principal balance, which is the difference between items a and b;

d. The amount of the service charge;

e. The balance, which is the sum of items c and d, payable by the insured, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

(c) The items need not be stated in the sequence or order set forth above, inapplicable items may be omitted; additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(d) No insurance premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later inserted in the original of the agreement after it has been signed by the insured. (1963, c. 1118.)

§ 58-59. Limitations on service charges; computation; minimum charges.—(a) An insurance premium finance company shall not directly or indirectly except as otherwise provided by law, impose, take, receive from, reserve, contract for, or charge an insured greater service charges than are permitted by this article. No insurance premium finance company shall be permitted to charge or finance any membership fees, dues, registration fees, or any other charges except the service charges provided for in this article for financing insurance premiums on policies of insurance lawfully placed in this State.

(b) An insurance premium finance company may, in an insurance premium finance agreement, contract for, charge, receive, and collect a service charge for financing the premiums under the agreement computed as provided in subsection (c).

(c) The service charge provided for in this section shall be computed on the principal balance of the insurance premium finance agreement from the inception date of the insurance contract, the premiums for which are advanced or to be advanced under the agreement unless otherwise provided under rules and regulations prescribed by the Commissioner, to and including the date when the final installment of the insurance premium finance agreement is payable, at a rate not exceeding ten dollars ($10.00) per one hundred dollars ($100.00) per annum; provided that when the principal balance is one hundred twenty dollars ($120.00) or less, a licensee may charge, in lieu of the charge specified above, rates not exceeding, two dollars ($2.00) for each ten dollars ($10.00) on that part of the principal balance not exceeding forty dollars ($40.00); one dollar ($1.00) for each ten dollars ($10.00) on that part of the principal balance exceeding forty dollars ($40.00) but not exceeding seventy dollars ($70.00); fifty cents (50¢) for each ten dollars ($10.00) on that part of the principal balance exceeding seventy dollars ($70.00) but not exceeding one hundred twenty dollars ($120.00). All service charges are to be rounded off to the nearest dollar and are subject to a minimum charge as follows: Three dollars ($3.00) when the principal balance is less than twenty dollars ($20.00); six dollars ($6.00) when the principal balance is twenty dollars ($20.00) or more, but less than one hundred twenty dollars ($120.00); fourteen dollars ($14.00) when the principal balance is one hundred twenty dollars ($120.00) or more.

(d) The provisions of subsection (c) apply if the premiums under only one (1) insurance contract are advanced or are to be advanced under an insurance premium finance agreement; if premiums under more than one (1) insurance contract are advanced or are to be advanced under an insurance premium finance agreement, the service charge shall be computed from the inception date of such insurance contracts, or from due date of such premiums; however, not more than one minimum service charge shall apply to each insurance premium finance agreement.

(e) No insurance agent or insurance premium finance company shall induce an insured to become obligated under more than one (1) insurance premium finance agreement for the purpose of or with the effect of obtaining service charges in excess of those authorized by this article. (1963, c. 1118.)

§ **58-59.1. Prohibited provisions in insurance premium finance agreements.**—No insurance premium finance agreement shall contain any provisions by which:

(1) In the absence of default of the insured, the insurance premium finance company holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(2) A power of attorney is given to confess judgment in this State; or

(3) The insured relieves the insurance agent or the insurance premium finance company holding the agreement from liability for any legal rights or remedies which the insured may otherwise have against him. (1963, c. 1118.)

§ **58-59.2. Delivery of copy of insurance premium finance agreement to insured.**—Before the due date of the first installment payable under an insurance premium finance agreement, the insurance premium finance company holding the agreement or the insurance agent shall deliver to the insured, or mail to him at his address as shown in the agreement, a copy of the agreement. (1963, c. 1118.)

§ **58-59.3. Payments by insured without notice of assignment of agreement.**—Unless the insured has notice of actual or intended assignment of the insurance premium finance agreement, payment thereunder by him to the last known holder of the agreement shall be binding upon all subsequent holders or assignees. (1963, c. 1118.)

§ **58-59.4. Statement of account; release on payment in full.** — (a) At any time after its execution, but not later than one (1) year after the last payment thereunder, an insurance premium finance company holding an insurance premium finance agreement shall, upon written request of the insured, give or mail to him a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder.

(b) After the payment of all sums for which an insured is obligated under an insurance premium finance agreement, and upon his written demand, the insurance premium finance company holding the agreement shall deliver, or mail to the insured at his last known address, such one (1) or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all interest in or rights to the insurance contracts, the premiums for which were advanced or are to be advanced under the agreement. (1963, c. 1118.)

§ **58-59.5. Credit upon anticipation of payments.**—(a) Notwithstanding the provisions of any insurance premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance thereof; and, if he does so and the agreement included an amount for service charge, he shall receive and be entitled to receive for such anticipation a refund credit thereon.

(b) The amount of any such refund credit shall represent at least as great proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit for anticipation of payment is less than one dollar ($1.00), no refund need be made. Where the earned service charge amounts to less than twelve dollars ($12.00) or where the minimum service charge permitted is less than twelve dollars ($12.00), the refund credit shall be an amount equal to the total service charge less twelve dollars ($12.00) or such minimum service charge. As used in this subsection, the term "earned service charge" shall mean the total service charge less the refund credit as computed in accordance with the first sentence of this subsection. (1963, c. 1118.)

§ 58-60. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value. —When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless such cancellation is effectuated in accordance with the following provisions:

(1) Not less than ten (10) days written notice be furnished the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. A notice thereof shall also be mailed to the insurance agent.

(2) After expiration of such period, the insurance premium finance company shall mail the insurer a request for cancellation, including a copy of the power of attorney, and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance agreement.

(3) Upon receipt of a copy of such request for cancellation notice by the insurer or insurers, the insurance contract shall be cancelled with the same force and effect as if the aforesaid request for cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insured first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive such notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or insureds. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, such excess shall be remitted promptly to the order of the insured and agent, subject to the minimum service charge provided for in this article.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also, apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract. (1963, c. 1118.)

§ 58-61. Violations; penalties.—Any person who shall engage in the business referred to in this article without first receiving a license, or who shall fail to secure a renewal of his license upon the expiration of the license year, or shall engage in the business herein referred to after the license has been suspended or revoked as herein provided, or who shall fail or refuse to furnish the information required of the Commissioner, or who shall fail to observe the rules and regulations made by the Commissioner pursuant to this article, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or be imprisoned, or both, at the discretion of the court. (1963, c. 1118.)

§ 58-61.1. Disposition of fees. — All fees collected hereunder shall be credited to the account of the Insurance Commissioner for the specific purpose of providing the personnel, equipment and supplies necessary to enforce this article, but the Director of the Budget shall have the right to budget the revenues received in accordance with the requirements of the Commissioner for the purposes herein required, and at the end of the fiscal year, if any sum whatever shall remain to the credit of the Commissioner, derived from the sources herein referred to, the same shall revert to the general treasury of the State to be appropriated as other funds. (1963, c. 1118.)

Article 5.

License Fees and Taxes.

§ 58-63. Schedule of fees and charges.

(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents per copy sheet and one dollar for certifying same, or any fact or data from the records of his office; for examination of any foreign company, not less than forty dollars per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars. The traveling and other expenses of accountants, and other examiners when engaged in the work of examination shall be paid by the companies, associations, or orders under investigation. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.

(1963, c. 692.)

Editor's Note.—

The 1963 amendment substituted "fifty" for "ten" near the beginning of subdivision (3). As only this subdivision was affected by the amendment the rest of the section is not set out.

SUBCHAPTER II. INSURANCE COMPANIES.

Article 6.

General Domestic Companies.

§ 58-77. Amount of capital and/or surplus required; impairment of capital or surplus.—The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of this chapter shall be as follows:

(1) Stock Life Insurance Companies.

a. A stock corporation may be organized in the manner prescribed in this chapter and licensed to do the business of life insurance, only when it shall have a paid-in capital of at least three hundred thousand dollars ($300,000.00) and a paid-in initial surplus of an amount at least equal to such capital, and it may in addition do any one or more of the kinds of business specified in subdivisions (2) and (3) of G. S. 58-72, without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than three hundred thousand dollars ($300,000.00) and a minimum surplus of at least seventy-five thousand dollars ($75,000.00).

b. If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do the business of life insurance, or the writing of annuities or both, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit the organization of a stock corporation to do on such restricted plan either or both of the kinds of business specified in subdivisions (1) and (2) of G. S. 58-72, with the minimum paid-in capital and a minimum paid-in surplus in an amount to be prescribed by him, but in no event to be less than a paid-in capital of two hundred thousand dollars ($200,000.00) and a paid-in surplus of two hundred thousand dollars ($200,000.00). Every such company shall at all times thereafter maintain such prescribed minimum capital and a minimum surplus of at least fifty thousand dollars ($50,000.00).

(2) Stock Accident and Health Insurance Companies.

a. A stock corporation may be organized in the manner prescribed in this chapter and licensed to do only the kind of insurance specified in subdivision (3) a of G. S. 58-72, when it shall have a paid-in capital of not less than two hundred thousand dollars ($200,000.00), and a paid-in surplus at least equal to such capital. Every such company shall at all times thereafter maintain a minimum capital of not less than two hundred thousand dollars ($200,000.00) and a minimum surplus of at least fifty thousand dollars ($50,000.00).

b. Any company organized under the provisions of paragraph a of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in paragraph b of subdivision (3) of G. S. 58-72, if it has a paid-in capital at least equal to three hundred thousand dollars ($300,000.00), and a paid-in initial surplus at least equal to such capital. Every such company shall at all times maintain a minimum capital of not less than three hundred thousand dollars ($300,000.00) and a minimum surplus of at least fifty thousand dollars ($50,000.00).

(3) Stock Fire and Marine Companies.—A stock corporation may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G. S. 58-72 only when it shall have a paid-in capital of not less than four hundred thousand dollars ($400,000.00) and a contributed surplus equivalent to not less than such paid-in capital. Every such company shall at all times thereafter maintain a minimum capital of not less than four hundred thousand dollars ($400,000.00) and a minimum surplus of at

least one hundred thousand dollars ($100,000.00) provided that, any such corporation may do all the kinds of insurance authorized for casualty, fidelity and surety companies, as set out in subdivision (4) hereof where its charter so permits, when and if it meets all additional requirements as to capital and surplus as fixed in said section, and maintains the same.

(4) Stock Casualty and Fidelity and Surety Companies.—A stock corporation may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G. S. 58-72 only when it shall have a paid-in capital of not less than five hundred thousand dollars ($500,000.00) and a contributed surplus equivalent to not less than such paid-in capital. Every such company shall at all times thereafter maintain a minimum capital of not less than five hundred thousand dollars ($500,000.00) and a minimum surplus of at least one hundred and twenty-five thousand dollars ($125,000.00). If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do one or more of such kinds of insurance, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit such corporation to be organized and licensed to write the lines set out in this section with a paid-in capital of not less than three hundred thousand dollars ($300,000.00) and a contributed surplus equivalent to not less than such paid-in capital, and every such company shall hereafter maintain a minimum capital of not less than three hundred thousand dollars ($300,000.00) and a minimum surplus of at least seventy-five thousand dollars ($75,000.00) provided that, any casualty, fidelity and surety corporation may do all the kinds of insurance authorized for fire and marine companies, as set out in subdivision (3) hereof where its charter so permits, when and if it meets all additional requirements as to capital and surplus as fixed in said section, and maintains the same.

(5) Mutual Fire and Marine Companies.

a. Limited assessment companies.—A limited assessment mutual company may be organized in the manner prescribed in this chapter and licensed to do one or more kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21), and (22) of G. S. 58-72 only when it has no less than five hundred thousand dollars ($500,000.00) of insurance in not fewer than five hundred separate risks subscribed with a contributed initial surplus of at least one hundred thousand dollars ($100,000.00), which surplus shall at all times be maintained. The assessment liability of a policyholder of a company organized in accordance with the provisions of this paragraph shall not be limited to less than five annual premiums provided, such limited assessment company may reduce the assessment liability of its policyholders from five annual premiums as set out herein to one additional annual premium when the free surplus of such company amounts to not less than two hundred thousand dollars ($200,000.00), which surplus shall at all times be maintained.

b. Assessable mutual companies.—An assessable mutual company may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), and (6) of G. S. 58-72 with an unlimited assessment liability of its policyholders only when it shall have not less than five hundred thousand dollars ($500,000.00) of insurance in not fewer than five hundred separate risks subscribed with contributed surplus equal to twice the amount of the maximum net retained liability under the largest policy of insurance issued by such company; but not less than twenty thousand dollars ($20,000.00), which surplus shall at all times be maintained. Provided such company, when its charter so permits, in addition may be licensed to do one or more of the kinds of insurance specified in subdivisions (7), (8), (11), (12), (19), (20), (21) and (22) of G. S. 58-72, with an unlimited assessment liability of its policyholders, when its free surplus amounts to not less than fifty thousand dollars ($50,000.00), which surplus shall at all times be maintained.

c. Nonassessable mutual companies.—A nonassessable mutual company may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21), and (22) of G. S. 58-72 and may be authorized to issue policies under the terms of which a policyholder is not liable for any assessments in addition to the premium set out in the policy only when it shall have not less than five hundred thousand dollars ($500,000.00) of insurance in not fewer than five hundred separate risks subscribed with a contributed initial surplus of not less than four hundred thousand dollars ($400,000.00) which surplus shall at all times be maintained.

d. Town or county mutual insurance companies.—A town or county mutual insurance company, with unlimited assessment liability, may be organized in the manner prescribed in this chapter and licensed to do the kinds of insurance specified in subdivision (4) of G. S. 58-72 only when it shall have not less than fifty thousand dollars ($50,000.00) of insurance in not fewer than fifty separate risks subscribed with a contributed surplus at all times not less than the maximum net retained liability under the largest risk written or to be written whichever is the greater sum, which surplus shall at all times be maintained. A town or county mutual insurance company may, in addition to writing the business specified in subdivision (4) of G. S. 58-72, cover in the same policy the hazards usually insured against under an extended coverage endorsement when such company has and at all times maintains in addition to the surplus hereinbefore required, an additional surplus of not less than twenty-five thousand dollars ($25,000.00) or not less than an amount equivalent to one per cent (1%) of the total amount of net retained insurance in force, whichever is the larger sum: Provided, that such company may not operate in more than three adjacent counties in this State.

(6) Mutual Life, Accident and Health Insurance Companies.—A nonassessable mutual insurance company may be organized in the manner prescribed in this chapter, and licensed to do only one or more of the kinds of insurance specified in subdivisions (1), (2) and (3) of G. S. 58-72 when it has complied with the requirements of this chapter and with those hereinafter set forth in paragraphs (a) to (d), inclusive, of this subdivision, whichever shall be applicable.

a. If organized to do only the kinds of insurance specified in subdivisions (1) and (2) of G. S. 58-72, such company shall have not less than five hundred bona fide applications for life insurance in an aggregate amount not less than five hundred thousand dollars ($500,000.00), and shall have received from each such applicant in cash the full amount of one annual premium on the policy applied for by him, in an aggregate amount at least equal to ten thousand dollars ($10,000.00), and shall in addition have a contributed surplus of one hundred thousand dollars ($100,000.00), and shall have and maintain at all times a minimum surplus of fifty thousand dollars ($50,000.00).

b. If organized to do only the kind of insurance specified in paragraph a of subdivision (3) of G. S. 58-72 such company shall have not less than two hundred and fifty bona fide applications for such insurance, and shall have received from each such applicant in cash the full amount of one annual premium on the policy applied for by him in an aggregate amount of at least ten thousand dollars ($10,000.00), and shall have a contributed surplus of one hundred thousand dollars ($100,000.00) and shall have and maintain at all times a minimum surplus of fifty thousand dollars ($50,000.00).

c. If organized to do the kinds of insurance specified in subdivision (1) and in paragraph a of subdivision (3) of G. S. 58-72, such company shall have complied with the provisions of both paragraph a and b hereof.

d. If organized to do the kind of insurance specified in paragraph b of subdivision (3) of G. S. 58-72, in addition to the kind or kinds of insurance designated in any one of the foregoing paragraphs of this subdivision, such company shall have a contributed surplus, and shall maintain a minimum surplus, each in an amount of at least fifty thousand dollars ($50,000.00) in excess of the respective amounts required by paragraphs a, b and c hereof where applicable.

(7) Organization of Mutual Casualty, Fidelity and Surety Companies.

a. Nonassessable mutual companies.—A mutual insurance company with no assessment liability provided for its policyholders may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G. S. 58-72 when it has a minimum contributed surplus of five hundred thousand dollars ($500,000.00) and not less than five hundred thousand dollars ($500,000.00) in insurance subscribed in not less than five hundred separate risks. The surplus of such company shall at all times be maintained at or above the amount required hereinabove for organization of such company.

b. Assessable mutual companies.—A mutual insurance company with assessment liability provided for its policyholders may be organized in the manner prescribed in this chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G. S. 58-72 when it has a minimum contributed surplus of two hundred thousand dollars ($200,000.00) and not less than five hundred thousand dollars ($500,000.00) of insurance subscribed in not less than five hundred separate risks. Such company shall at all times maintain a surplus in an amount not less than two hundred thousand dollars ($200,000.00). The assessment liability of a policyholder of such company shall not be limited to less than one annual premium.

(8) a. A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of paragraph a of subdivision (5), and paragraph b of subdivision (7) where its charter so permits when and if it meets the combined maximum requirements of said paragraphs. The assessment liability of policyholders of such a company shall not be limited to less than one annual premium within any one policy year.

b. A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of paragraph c of subdivision (5), and paragraph a of subdivision (7) where its charter so permits when and if it meets the combined maximum requirements of said paragraphs. The policyholders of such a company shall not be subject to any assessment liability.

(9) Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1963, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided, however, such insurers shall increase the capital and surplus requirements to the amounts set forth herein on or before July 1, 1969, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business.

(10) Whenever the Commissioner finds from a financial statement made by any such company, or from a report of examination of any such company, that its admitted assets are less than the aggregate amount of its liabilities and its outstanding capital stock and/or required minimum surplus, he shall determine the amount of such impairment of capital and/or surplus and issue an order in writing requiring the company to eliminate the impairment within such period of not more than ninety (90) days as he shall designate. The Commissioner may, by order served upon the company, prohibit the company from issuing any new policies while such impairment exists. If at the expiration of the designated period the company has not satisfied the Commissioner that the impairment has been eliminated, an order for the rehabilitation or liquidation of the company may be entered as provided in article 17A, chapter 58 of the General Statutes of North Carolina. (1899, c. 54, s. 26; 1903, c. 438, s. 4; Rev., s. 4729; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; C. S., s. 6332; 1929, c. 284, s. 1; 1945, c. 386; 1947, c. 721; 1963, c. 943.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, increased the amounts of capital and surplus throughout this section. It also substituted "July 1, 1963" for "January 1, 1945" in subdivision (9), inserted the proviso in subdivision (9) and added subdivision (10).

§ **58-79. Investments; life.**—(a) Investments Specified.—Every domestic stock and mutual life insurance company must have and continually keep to the extent of an amount equal to its entire reserves, as hereinafter defined, and entire capital, if any, and minimum required surplus, invested in:

(1) Coin or currency of the United States of America, on hand or on deposit in a national or state bank or trust company or invested in the shares of any building and loan or savings and loan association, or invested in the shares of any federal savings and loan association.

(2) Interest bearing bonds, notes, certificates of indebtedness, bills or other direct interest bearing obligations of the United States of America or

of the Dominion of Canada or other interest bearing obligations fully guaranteed both as to principal and interest by the United States of America, or by the Dominion of Canada.

(3) Interest bearing bonds of any state, District of Columbia, territory or possession of the United States of America, or of any province of the Dominion of Canada, or of any county, or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(4) Interest bearing bonds of any commission, authority or political subdivision having legal authority to issue the same of any state, District of Columbia, territory or possession of the United States of America or of any county or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(5) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Interest bearing bonds, notes or other interest bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development. Equipment trust obligations or certificates or other secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such transportation equipment.

(6) Dividend paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than ten per cent (10%) of its total admitted assets in stocks; and further provided, that no company may invest more than three per cent (3%) of its admitted assets in the stock or shares of any one corporation, and provided further, except as the Commissioner shall permit, that such investment in any one corporation not engaged solely in the business of insurance shall not result in the acquisition of more than 20% of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.

(7) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five per cent (75%) of the fair market value of such fee simple or improved leasehold real estate. No loan may be made on leasehold real estate unless the lease has at least thirty years to run before its termination and the loan matures at least twenty years before expiration of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Service Men's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five per cent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

(8) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between date of acquisition and earliest redemption date or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(9) Collateral loans secured by pledge of any security named in subdivisions (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection; provided that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty-five per cent (25%) more than the unpaid balance of the amount loaned on them.

(10) Loans upon the policies of the company; provided that the total indebtedness against any policy shall not be greater than the loan value of such policy.

(11) No domestic company may directly or indirectly acquire or hold real property except as follows:

a. Such land and buildings thereon in which it has its principal office and such real estate as shall be requisite for the convenient transaction of its own business; the amount invested in such real property shall not exceed ten per centum of the investing company's admitted assets, but the Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held before him.

b. Property mortgaged to it in good faith as security for loans previously contracted for money due.

c. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

d. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale value of real property previously acquired or held by it under paragraphs b and c of this subdivision and subject to the prior written approval of the Commissioner.

e. 1. Real estate aquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions:

I. A. Where there has already been erected on said property a building or other improvements satisfactory to the purchaser, or

      B. Where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or
      C. Where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on said property;
    II. That the said improvements shall remain on the said property during the period of the lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;
    III. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subparagraph (a) (11) e 1 shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subparagraph, nor shall real estate acquired pursuant to this subparagraph (a) (11) e 1 be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by equal decrements sufficient to write off at least seventy-five per cent (75%) of the investment at the normal termination of the lease or at the end of thirty years should the term of the lease be for a longer period. The total investments of any company under this subparagraph (a) (11) e 1 shall not exceed six per cent of its assets, nor more than fifty per cent (50%) of its capital and surplus whichever is less.
  2. Subject to approval of the Commissioner, real estate for recreation, hospitalization, convalescent and retirement purposes of its employees. Such investment under this subparagraph (a) (11) e 2 shall not exceed five per cent (5%) of the company's surplus.
  3. Subject to the approval of the Commissioner, real estate for public or private housing developments. Such investment under this subparagraph (a) (11) e 3 shall be subject to and not exceed the limitation provided for in the last sentence of subparagraph (a) (11) e 1 III hereof.
  4. No investment shall be made by any company pursuant to this paragraph e which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed ten per cent (10%) of its assets.

f. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose.

Real estate acquired under paragraph (a) (11) a and subparagraph (a) (11) e 2 of this section which has ceased to be used or to be necessary for the purposes stated therein shall be sold within five years thereafter, unless the company procures a certificate from the Commissioner that the interest of the company will materially suffer by a forced sale of such real estate in which event the time for the sale may be extended to such a time as the Commissioner may direct in the certificate. Any real estate acquired under paragraphs b, c and d of this subdivision (11) shall be sold within five years after the company has acquired title thereto; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Any real estate acquired under subparagraph (a) (11) e 1 of this section shall within five years after the termination or expiration of such lease be sold or released for an additional term pursuant to the provisions of subparagraph (a) (11) e 1; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Nothing contained herein prevents any insurance company from improving or conveying its real estate, notwithstanding the lapse of five years without having procured such certificate from the Commissioner.

(12) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars ($25,000.00), but not more than two per cent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed ten (10) calendar years.

(13) Interest, rents or other fixed income due and accrued on any of the investments named in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11) of this subsection pursuant to regulations promulgated by the Commissioner.

(14) To the extent necessary to satisfy the investment requirements as to reserves and entire capital, if any, and minimum required surplus, no company shall make any investment in or loan on any of the securities mentioned in this section, which are in default as to principal or interest or as to which the dividend on the last preceding dividend date has been passed.

(1961, cc. 263, 378.)

Editor's Note.—

The first 1961 amendment inserted present subdivision (12) of subsection (a) and renumbered former subdivisions (12) and (13) as (13) and (14). The second 1961 amendment changed subsection (a) by renumbering the former subparagraph (11) e 3 as subparagraph (11) e 4 and by inserting a new subparagraph (11) e 3. As only subsection (a) was changed the rest of the section is not set out.

ARTICLE 13A.

Casualty Insurance Rating Regulations.

§ 58-131.18. Restriction on use of rates.

This section is intended to prevent rebating and an unlawful discrimination and favoritism by insurance companies. Where there is nothing in the record suggestive of an intent by either party to violate this section, an otherwise valid compromise will not be avoided solely on the ground that it is contrary to public policy. There must be some fact on which the asserted invalidity can rest. Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 179 F. Supp. 538 (1960), quoting Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 250 N. C. 547, 109 S. E. (2d) 171 (1959).

Compromise Settlement as to Credits for

Unearned Premiums.—Where dispute between insurer and insured as to the amount of premiums due is not based upon controversy as to the rates but solely as to credits for unearned premiums and overpayment of premiums, a compromise settlement cannot be avoided on the ground that it was contrary to this section, since such compromise does not rest upon a charge of premiums at rates less than those prescribed by statute. Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 250 N. C. 547, 109 S. E. (2d) 171 (1959).

ARTICLE 17.

Foreign or Alien Insurance Companies.

§ 58-153.1. Unauthorized Insurers Process Act.

Section 58-164 (e) (1) is no longer in effect and has been superseded by this section. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

The purpose of this section is to protect residents of this State who are insureds or beneficiaries of insurance contracts. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

The plain language of this section manifests that the primary purpose of the statute is to protect residents of this State, and to prevent the necessity of North Carolina residents from resorting to distant forums to assert rights under insurance policies. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Nonresident Plaintiffs. — A substitute service statute would be inequitable where a nonresident seeks to take advantage of it to sue on a foreign cause of action unrelated to the State. Under such circumstances, a showing of substantial business activity in the State by the defendants would be required. In fact, unless such statutes are construed to make these requirements there is considerable doubt of their constitutionality. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Where none of the plaintiffs are residents of North Carolina they are not entitled to take advantage of this section. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Holders of public liability policies, were neither "residents" nor "insureds or beneficiaries" within the meaning of this section, and therefore the section was inapplicable in their declaratory judgment action against nonresident reinsurers who did not transact business in North Carolina, and service of process attempted under this section on such defendants was ineffectual and invalid. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Nonresident Reinsurers Licensed to Do Business in State.—Nonresident reinsurers were subject to the jurisdiction of the United States district court in North Carolina by reason of the fact that they were licensed to do business in North Carolina. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

ARTICLE 17A.

Mergers, Rehabilitation and Liquidation of Insurance Companies.

§ 58-155.12. Conduct of delinquency proceedings against insurers not domiciled in this State.

Cited in State v. Equity General Ins. Co., 255 N. C. 145, 120 S. E. (2d) 452 (1961).

§ 58-155.19. Injunctions.

Cited in State v. Equity General Ins. Co., 255 N. C. 145, 120 S. E. (2d) 452 (1961).

SUBCHAPTER III. FIRE INSURANCE.

Article 18.

General Regulations of Business.

§ 58-164. Uniform Unauthorized Insurers Act.

This section applies only to fire insurance. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Subsection (e) (1) of this section is no longer in effect and has been superseded by § 58-153.1. Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (1962).

Article 19.

Fire Insurance Policies.

§ 58-176. Fire insurance contract; standard policy provisions.

I. GENERAL CONSIDERATION.

When a loss occurs the rights of the parties to a fire insurance policy become fixed. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

The standard fire policy does not provide for automatic termination of the insurance upon default in the payment of premium installments. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Right to Cancel Policy.—

An insurance policy is a contract; a contract may be rescinded for fraud or mutual mistake, it may be terminated in accordance with the provisions thereof or by mutual consent, a meeting of the minds, but one of the parties may not terminate it without the assent of the other unless the contract so provides. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Same—Provision for Notice.—

To effect a cancellation by insurer, the five days' notice provision must be strictly complied with. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Unless the requirement is waived by insured, an insurer must comply with the terms of the policy or statute that it give notice of its intention to cancel. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

A provision in a policy that insurer must give notice to insured as a condition precedent to cancellation is for insured's benefit and may be waived by him. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

The burden is on insurer to show a waiver by the insured, and it must appear clearly that the insured expressly or impliedly waived notice of cancellation if he is to be held bound by such waiver. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Same—Communication of Insured's Intent.—To effect a cancellation by insured there must be communicated to the insurer a definite and unconditional request therefor by insured or his authorized agent. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

A mere intention to cancel, not communicated to insurer, is not sufficient to effect a cancellation by the insured. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Same—Procuring Additional Insurance.—Procuring additional insurance without requesting the original insurer to cancel its policy does not terminate the policy. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Same—Substitution of One Policy for Another.—In order for cancellation to take place by the substitution of one policy for another it must be done by mutual consent or agreement. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Mere procuring of substituted insurance with the intent to replace existing insurance and without the intent to thereby acquire additional insurance does not per se work a cancelling of the existing insurance. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Knowledge of Agent Imputed to Company.—In the absence of fraud or collusion between the insured and the agent, the knowledge of the agent when acting within the scope of the powers entrusted to him will be imputed to the company, though a direct stipulation to the contrary appears in the policy or the application for same. Faircloth v. Ohio Farmers Ins. Co., 253 N. C. 522, 117 S. E. (2d) 404 (1960).

Standard or Union Mortgage Clause.—When the standard or union mortgage clause is attached to or inserted in a policy insuring property against loss, it operates as a distinct and independent contract between the insurance company and the mortgagee, effecting a separate insurance of the mortgage interest. Shores v. Rabon, 251 N. C. 790, 112 S. E. (2d) 556 (1960).

Same—Effect of Foreclosure Deed to Mortgagee.—A deed to the mortgagee upon foreclosure of the mortgage does not defeat the right of the mortgagee under a standard or union mortgage clause, despite the argument that the word "mortgagee" in that clause discloses an intention to benefit one in that capacity only, and the contention based on the provisions of that clause requiring the mortgagee to notify the insurer of any change of ownership which shall come to his knowledge. Shores v. Rabon, 251 N. C. 790, 112 S. E. (2d) 556 (1960).

II. TITLE OR INTEREST OF INSURED.

Evidence Sufficient to Support Finding of Insurable Interest.—Evidence that the owner of property advised insurer's agent that he was giving the property in question to his son and to change the insurance so as to name his son the insured, that the owner thereafter died and the son remained in exclusive possession of the property and continued the insurance in force, was sufficient to support the conclusion that the son had an insurable interest in the property so as to be entitled to recover on the policy. King v. National Union Fire Ins. Co., 258 N. C. 432, 128 S. E. (2d) 849 (1963).

III. CERTAIN OTHER CONDITIONS.

Additional Insurance.—

Where insured obtains other insurance, contrary to the provisions of his policy, the insurer may avoid liability for breach of the provision prohibiting other insurance, since breach of the provision against additional insurance, both before and after the 1945 amendment to this section, does not merely limit the amount of insurer's liability, but is a breach of condition defeating recovery. Hiatt v. American Ins. Co., 250 N. C. 553, 109 S. E. (2d) 185 (1959).

Same—Right to Have Other Coverage Determined and Maintained.—Provision of an insurance contract providing that the insurer "shall not be liable for a greater portion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved," gives it the right to have determined whether there was at the time of the loss other coverage, what its liability is, and to insist that other coverage be not extinguished after the loss by acts of the insured which will cast the entire loss on it. Baysdon v. Nationwide Mut. Fire Ins. Co., 259 N. C. 181, 130 S. E. (2d) 311 (1963).

Limitation of Suit—Noncompliance Bars Action.—If, in an action upon a fire insurance policy, the judge sustained a demurrer to the complaint and a new complaint was filed more than twelve months "after the inception of the loss," nothing else appearing, the action would be barred for failure to comply with this section. Gaskins v. Hartford Fire Ins. Co., 260 N. C. 122, 131 S. E. (2d) 872 (1963).

Same—Waiver of Policy Provision.—

Where plaintiff insured filed a complaint stating an enforceable cause of action within twelve months of the loss by fire, and after the expiration of the twelve-month period the parties consented that defendant's demurrer should be sustained, and thereafter an amended complaint was filed in accordance with the consent order, defendant insurer was not permitted to assert the provision of the policy that action be instituted within twelve months after loss, since the provision was contractual and subject to waiver or estoppel. Gaskins v. Hartford Fire Ins. Co., 260 N. C. 122, 131 S. E. (2d) 872 (1963).

Same—Not Construed, etc.—

A provision in a standard fire insurance policy that action on it must be commenced within twelve months after inception of the loss is contractual. It is, therefore, subject to waiver or estoppel. Gaskins v. Hartford Fire Ins. Co., 260 N. C. 122, 131 S. E. (2d) 872 (1963).

Standard Loss-Payable Clause—Effect of Issuance to Mortgagor.—A standard loss-payable clause in a policy of fire insurance issued to the mortgagor constitutes a separate contract insuring the mortgage interest, and loss paid by insurer thereunder must be applied to the reduction of the mortgage debt. Employers' Fire Ins. Co v. British America Assurance Co., 259 N. C. 485, 131 S. E. (2d) 36 (1963).

Same—Limitation on Mortgagee's Interest.—The clause in the standard policy that provides the insured shall not collect "in any event for more than the interest of the insured," limits a mortgagee's interest to the debt due him. Employers' Fire Ins.

Co. v. British America Assurance Co., 259 N. C. 485, 131 S. E. (2d) 36 (1963).

Same—Proration of Loss between Insurers.—Where property, destroyed by fire, was insured by two policies, one issued to the mortgagee under authority of the mortgagor, the mortgagor being liable for the premiums thereon; one issued to the mortgagor; and both containing a standard loss-payable clause, it was proper to prorate the loss between the insurers. Employers' Fire Ins. Co. v. British America Assurance Co., 259 N. C. 485, 131 S. E. (2d) 36 (1963).

IV. LIABILITY OF INSURER IN CASE OF LOSS; SUBROGATION.

The appointment of an umpire is made at the request of either the insurer or insured and no notice to the other is required, no hearing is contemplated. In re Roberts Co., 258 N. C. 184, 128 S. E. (2d) 137 (1962).

It Is Not Judgment of Court.—The appointment of an umpire pursuant to the "appraisal" clause is not the judgment of a court, it is a mere ministerial act pursuant to contract, albeit authorized by statute. In re Roberts Co., 258 N. C. 184, 128 S. E. (2d) 137 (1962).

It Need Not Be Made at Any Particular Time or Place.—There is no requirement that the appointment of an umpire be made in term or at any particular time or place. In re Roberts Co., 258 N. C. 184, 128 S. E. (2d) 137 (1962).

The appointment of an umpire may be challenged only by an action instituted for that purpose. In re Roberts Co., 258 N. C. 184, 128 S. E. (2d) 137 (1962).

The legal effect of the appointment of an umpire and any acts done pursuant thereto may be challenged in any action in which they arise. In re Roberts Co., 258 N. C. 184, 128 S. E. (2d) 137 (1962).

Insurers Subrogated to Rights of Insured.—

In accord with original. See General Ins. Co. of America v. Faulkner, 259 N. C. 317, 130 S. E. (2d) 645 (1963).

Subrogation to Rights of Mortgagee.—

When a mortgagee purchases with his funds insurance solely for his protection, the insurer, upon payment of the mortgagee's loss as provided in the policy, is subrogated to the rights of the mortgagee against the mortgagor; but where, the insurance is procured by the mortgagee pursuant to the authorization and at the expense of the mortgagor, no right of subrogation exists and the amount paid by the insurer must be applied to discharge or reduce mortgagor's obligation to mortgagee. Employers' Fire Ins. Co. v. British America Assurance Co., 259 N. C. 485, 131 S. E. (2d) 36 (1963).

§ 58-177. Standard policy; permissible variations.

Applied in Faircloth v. Ohio Farmers Ins. Co., 253 N. C. 522, 117 S. E. (2d) 404 (1960).

§ 58-177.1. Optional provisions as to loss or damage from nuclear reaction, nuclear radiation or radioactive contamination.—Insurers issuing the standard fire insurance policy pursuant to G. S. 58-176, or any permissible variation thereof, and policies issued pursuant to G. S. 58-177 and 58-126.1, are hereby authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination. (1963, c. 1148.)

§ 58-180.1. Policy issued to husband or wife on joint property.

Editor's Note.—For article on tenancy by the entirety in North Carolina, see 41 N. C. Law Rev. 67.

Where husband and wife sell lands held by entireties and take a note secured by a deed of trust in part payment of the purchase price, the wife's interest in the note is personalty and she owns no interest in the dwelling on the land so as to bring her within the purview of this section and, therefore, she is not covered by the mortgage clause in a policy of fire insurance on the premises in which she is not named. Shores v. Rabon, 251 N. C. 790, 112 S. E. (2d) 556 (1960).

ARTICLE 21.

Insuring State Property.

§ 58-189. State property fire insurance fund created.—Upon the expiration of all existing policies of fire insurance upon State owned buildings, fixtures, furniture, and equipment, including all such property the title to which may be in any State department, institution, or agency, the State of North Carolina shall not reinsure any of such properties.

There is hereby created a "State property fire insurance fund," which shall be as a special fund in the State treasury, for the purpose of providing a reserve against loss from fire at State departments and institutions. The sinking fund commission shall invest all funds deposited in the "State property fire insurance fund" in the same type of securities in which State sinking funds may be invested and all earnings of the fund shall become a part of the fund and be held and invested as contributions are invested. The unexpended appropriations of State departments and institutions for fire insurance premiums for the fiscal year 1944-45 and the appropriations for fire insurance premiums made for the biennium 1945-47 or that may thereafter be made for this purpose shall be transferred to the "State property fire insurance fund." (1945, c. 1027, s. 1; 1963, c. 462.)

Editor's Note.—

The 1963 amendment deleted the word "therein" formerly appearing after "equipment" near the middle of the first paragraph.

SUBCHAPTER IV. LIFE INSURANCE.

ARTICLE 22.

General Regulations of Business.

§ 58-197. Soliciting agent represents the company.

When Knowledge of Agent Imputed to Company.—

In accord with original. See Faircloth v. Ohio Farmers Ins. Co., 253 N. C. 522, 117 S. E. (2d) 404 (1960).

Responsibility of Insured for False Answers Inserted by Agent in Application.—The rule that the insured is not responsible for false answers in the application where they have been inserted by the agent through mistake, negligence, or fraud is not absolute, and applies only if the insured is justifiably ignorant of the untrue answers, has no actual or implied knowledge thereof, and has been guilty of no bad faith or fraud. Jones v. Home Security Life Ins. Co., 254 N. C. 407, 119 S. E. (2d) 215 (1961).

§ 58-201.1. Standard Valuation Law.

(b) The Commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this State, except that in the case of an alien company, such valuation shall be limited to its United States business, and may certify the amount of such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. Group methods and approximate averages for fractions of a year or otherwise may be used in calculating such reserves and the valuation made by the company may be accepted by the Commissioner upon such evidence of its correctness as the Commissioner may require. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(c) The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of § 58-201.2 shall be that provided by the laws in effect immediately prior to such date. The minimum standards for the valuation of all such policies and contracts issued on or after the operative date of § 58-201.2 shall be the Commissioner's reserve valuation method defined in subsection (d), three and one-half per cent (3½%) interest, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subdivision (e) (2) of § 58-201.2, and the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subdivision (e) (3) of § 58-201.2, and the Commissioner's 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined

with a mortality table permitted for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Commissioner.

(d) Reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (1) over (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(2) A net one year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioner's reserve valuation method for

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,

(2) Annuity and pure endowment contracts,

(3) Disability and accidental death benefits in all policies and contracts, and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies,

shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(1961, c. 255, ss. 1-3; 1963, c. 791, ss. 1, 2.)

Editor's Note.—

The 1961 amendment inserted in subsection (b) the exception clause following the words "business in this State" in line four. It also changed subsection (c) by renumbering former subdivision (6) as subdivision (7), striking out former subdivisions (3), (4) and (5) and inserting in lieu thereof present subdivisions (3) through (6). It further added the exception clause at the end of subsection (d).

The 1963 amendment changed subsection (c) by adding that part of subdivision (2) beginning with the words "for such policies" and substituting "termination" for "determination" in the first sentence of subdivision (5).

As only subsections (b), (c) and (d) were affected by the amendments the rest of the section is not set out.

§ 58-201.2. Standard nonforfeiture provisions.

(e) (1) Except as provided in the third paragraph of this subdivision, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this section except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) of this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

Except as otherwise provided in subdivisions (2) and (3) of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not be more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

(2) In the case of ordinary policies issued on or after the operative date of this subdivision (2) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After May 12, 1959, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (2) after a specified date before January 1st, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (2) for such company), this subdivision (2) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (2) for such company shall be January 1, 1966.

(3) In the case of industrial policies issued on or after the operative date of this subdivision (3) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After June 11, 1963, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1st, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (3) for such company), this subdivision (3) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (3) for such company shall be January 1, 1968.

(f) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (c), (d) and (e) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (c), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(1961, c. 255, ss. 4-7; 1963, c. 791, ss. 3, 4.)

Editor's Note.—

The 1961 amendment changed subdivision (1) of subsection (e) by adding the exception clause at the beginning of the first paragraph and making other changes therein. It substituted "uniform amount" for "level amount" in lines two and three of the second paragraph, substituted "date of issue" for "inception of the insurance" in line eight and added the proviso thereto. It also inserted the third paragraph of subdivision (1). The amendment changed subsection (f) by deleting the word "decreasing" formerly appearing in item (iv) immediately preceding the words "term insurance benefits." It also relettered former item (v) as item (vi) and inserted new item (v).

The 1963 amendment changed subsection (e) by inserting near the beginning of the last paragraph of subdivision (1) the reference to subdivision (3), joining the first and second sentences of the last paragraph of subdivision (1) and adding subdivision (3).

As only subsections (e) and (f) were changed by the amendments the rest of the section is not set out.

ARTICLE 24.

Mutual Burial Associations.

§ 58-224. Mutual burial associations placed under supervision of Burial Association Commissioner.

Editor's Note.—

The words "Bureau Association Commissioner" in line four of this section in the Replacement Volume should read "Burial Association Commissioner."

SUBCHAPTER V. AUTOMOBILE LIABILITY INSURANCE.

ARTICLE 25.

Regulation of Automobile Liability Insurance Rates.

§ 58-248.2. Insurance policy must conform to rates, etc., filed by rating bureau; when higher rate allowed.—No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the rating bureau. A rate in excess of that promulgated by the rating bureau may be charged on any specific risk provided such higher rate is charged with the knowledge and written consent of both the insured and the Commissioner. (1945, c. 381, s. 2; 1961, c. 1006, s. 1.)

Editor's Note.—The 1961 amendment, effective Sept. 1, 1961, deleted the former second, third and fourth sentences of this section relating to deviation from promulgated rates.

§ **58-248.8. Rates to distinguish between safe and nonsafe drivers.**—The Commissioner of Insurance, in the manner prescribed by article 25 of subchapter V of chapter 58 of the General Statutes, is directed to establish a Safe Driver Reward Plan which adequately and factually distinguishes between classes of drivers having safe-driving records and those having a record of chargeable accidents, convictions of major traffic violations.

No points shall be assigned, except as hereinafter designated, by any insurer with respect to any insured person pursuant to said plan unless the insured shall have been convicted of one or more of the following charges or traffic violations:

Manslaughter	not more than 8 points
Prearranged Highway Racing	not more than 8 points
Highway Racing	not more than 6 points
Drunken Driving	not more than 6 points
Hit and Run, Bodily Injury	not more than 6 points
Transporting Whiskey for Sale	not more than 6 points
Driving After License Suspended or Revoked	not more than 6 points
Hit and Run, Property Damage Only	not more than 3 points
Reckless Driving	not more than 3 points
Passing Stopped School Bus	not more than 3 points
Speeding in Excess of 75 mph	not more than 3 points
Illegal Passing	not more than 1 point
Two Convictions of Speeding in Excess of 55 mph	not more than 1 point
Two Convictions of Following Too Close	not more than 1 point
Two Convictions of Driving on Wrong Side of Road	not more than 1 point

Provided further that not more than 1 point shall be assigned by an insurer for an accident caused by the insured, while the insured's vehicle is in motion. (1957, c. 1393, s. 11; 1961, c. 1006, s. 2; 1963, c. 1144.)

Editor's Note.—The 1961 amendment, effective Sept. 1, 1961, rewrote this section.

The 1963 amendment, effective Sept. 1, 1963, deleted the words "and/or a series of minor traffic violations" at the end of the first paragraph and added that part of the section following the first paragraph.

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

ARTICLE 26.

Nature of Policies.

§ **58-250.1. Right to return policy and have premium refunded.**—Every individual or family hospitalization policy, certificate, contract or plan issued for delivery in the State of North Carolina on and after July 1, 1961, must have printed thereon or attached thereto a notice stating substantially: "YOUR POLICY MAY NOT BE IN FORCE WHEN YOU HAVE A CLAIM! PLEASE READ! Your policy was issued based on the information entered in your application, a copy of which is attached to the policy. If, to the best of your knowledge and belief, there is any misstatement in your application or if any information concerning the medical history of any insured person has been omitted, you should advise the Company immediately regarding the incorrect or omitted information; otherwise, your policy may not be a valid contract. RIGHT TO RETURN POLICY WITHIN 10 DAYS. If for any reason you are not satisfied with your policy, you may return it to the Company within ten (10) days of the date you received it and the premium you paid will be promptly refunded." If a policyholder or certificate holder or purchaser of a contract or plan returns same pursuant to such notice, coverage under such policy, certificate, contract or plan shall become void immediately upon the mailing or delivery of the contract, certificate, policy or plan to the insurance company at its home or branch office or to the agent through whom it was purchased. Coverage shall exist under such policy, certificate, contract or plan within said ten-day period until said mailing or delivery of the contract. (1955, c. 850, s. 10; 1961, c. 962.)

Editor's Note.—
The 1961 amendment, effective July 1, 1961, rewrote all of this section except the last two sentences.

§ **58-251.1. Accident and health policy provisions.**—(a) Required Provisions.—Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

(1) A provision as follows:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or waive any of its provisions.

(2) A provision as follows:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provisions may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000.00) or more for any one sickness or injury. Disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months and franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements".

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of § 58-251.1 (b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE".

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

GRACE PERIOD: A grace period of .... (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the record of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

a. Until at least age 50 or,

b. In the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

(6) A provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any period payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $........... (insert an amount which shall not exceed $1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services, may at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(1961, c. 432.)

Editor's Note.—
The 1961 amendment, effective July 1, 1961, changed subdivision (2) of subsection (a) by inserting the words "or reinstatement" in line one of the first paragraph of "a" and adding the second paragraph. As only subsection (a) was changed the rest of the section is not set out.

§ 58-254.3. Blanket accident and health insurance defined. — (a) Any policy or contract of insurance against death or injury resulting from accident or from accidental means which insures a group of persons conforming to the requirements of one of the following subdivisions (1) to (7), inclusive, shall be deemed a blanket accident policy. Any policy or contract which insures a group of persons conforming to the requirements of one of the following subdivisions (3), (5), (6) or (7) against total or partial disability, excluding such disability from accident or from accidental means, shall be deemed a blanket health insurance policy. Any policy or contract of insurance which combines the coverage of blanket accident insurance and of blanket health insurance on such a group of persons shall be deemed a blanket accident and health insurance policy:

(1) Under a policy or contract issued to any railroad, steamship, motorbus or airplane carrier of passengers, which shall be deemed the policyholder, a group defined as all persons who may become such passengers may be insured against death or bodily injury either while, or as a result of, being such passengers.

(2) Under a policy or contract issued to an employer, or the trustee of a fund established by the employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employee against death or bodily injury resulting while, or from, being exposed to such exceptional hazard.

(3) Under a policy or contract issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(4) Under a policy or contract issued in the name of any volunteer fire department, which shall be deemed the policyholder, covering all of the members of such department.

(5) Under a policy or contract issued to and in the name of an incorporated or unincorporated association of persons having a common interest or calling, which association shall be deemed the policyholder, having not less than twenty-five members, and formed for purposes other than obtaining insurance, covering all of the members of such association.

(6) Under a policy or contract issued to the head of a family, who shall be deemed the policyholder, whereunder the benefits thereof shall provide for the payment by the insurer of amounts for expenses incurred by the policyholder on account of hospitalization or medical or surgical aid for himself, his spouse, his child or children, or other persons chiefly dependent on him for support and maintenance.

(7) Under a policy or contract issued in the name of any municipal or county recreation commission or department which shall be deemed the policyholder.

(b) All benefits under any blanket accident, blanket health or blanket accident and health insurance policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor, such benefits may be made payable to his parent, guardian, or other person actually supporting him, or to a person or persons chiefly dependent upon him for support and maintenance.

(c) Nothing contained in this section shall be deemed to affect the legal liability of policyholders for the death of or injury to, any such member of such group. (1945, c. 385; 1947, c. 721; 1953, c. 1095, s. 5; 1961, c. 603.)

Editor's Note.—

The 1961 amendment changed subsection (a) by substituting "(7)" for "(6)" and "(6) or (7)" for "or (6)" in the introductory paragraph. It also added subdivision (7) at the end of the subsection.

§ **58-254.6. Definition of franchise accident and health insurance.**—Accident and health insurance on a franchise plan is hereby declared to be that form of accident and health insurance issued to five or more employees of any corporation, copartnership or individual employer or any governmental corporation, agency or department thereof, or ten or more members of any trade or professional association or of a labor union or of any other association where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance, where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons, under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of such employer or association. The provisions of this section shall not be construed so as to repeal §§ 58-254.3 and 58-254.4 or any parts thereof. (1947, c. 721; 1961, c. 646.)

Editor's Note.—

The 1961 amendment deleted the words "having had an active existence for at least two years" formerly appearing after "other association" in line five.

§ **58-254.8. Credit accident and health insurance.** — Credit accident and health insurance is declared to be insurance against death or personal injury by accident or by any specified kind or kinds of accident, and insurance against sickness, ailment, or bodily injury of a debtor who may be indebted to any person, firm, or corporation extending credit to such debtor. The amount of credit accident and health insurance written shall not exceed the installment payment. (1953, c. 1096, s. 2; 1961, c. 1071.)

Editor's Note.—The 1961 amendment, effective Sept. 1, 1961, added the second sentence.

ARTICLE 26A.

Joint Action to Insure Elderly.

§ **58-254.10. Definitions.**—Wherever used in this article, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

(1) "Association" means a voluntary unincorporated association formed for the sole purpose of enabling joint and cooperative action to provide accident and health insurance in accordance with this article in this or any other State having legislation enabling the issuance of insurance of the type provided in this article.

(2) "Insurer" means any insurance company which is authorized under this chapter to transact accident and health insurance business in this State. (1963, c. 1125.)

Editor's Note.—In the 1963 act inserting this article, the sections were numbered 58-255.1 to 58-255.6.

§ **58-254.11. Joint action to insure persons 65 years of age and over and their spouses permitted; associations of insurers; individual and group policies.**—Notwithstanding any other provisions of this chapter or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers to plan, develop, underwrite, offer, sell and provide to or for any resident person of this State, or of another state if permitted by the laws of such other state, who is 65 years of age or over and to the spouse of such person, insurance against financial loss from accident or sickness, or both. Such insurance may be offered, issued and administered through an association of two or more insurers which association is formed for the purpose of offering, selling, issuing and administering such insurance, and may be in the form of a policy insuring a resident who is 65 years of age or older, and the spouse of such resident, if any, or in the form of a group policy insuring residents 65 years of age or older and the spouses of such residents, or in both forms. On such insurance each insurer shall be severally liable for a percentage of the risks determined under the articles of association of the association. The insurer members of such association may agree with respect to premium rates, policy provisions, commission rates and other matters within the scope of this article. Notwithstanding the provisions of G. S. 58-44, any policy providing such insurance may be executed on behalf of the insurers or the association, as the case may be, by a duly authorized person and need not be countersigned by a resident agent. (1963, c. 1125.)

§ **58-254.12. Regional plans authorized.** — If "over 65" accident and health insurance plans exist or hereafter come into existence in other states pursuant to legislative authority similar to that herein given, North Carolina insurers may jointly participate with insurers of such other states in forming a regional plan to carry out the purposes of this article. Any association formed for the operation of a regional plan shall be exempt from the provisions of G. S. 58-36 and may engage in business in North Carolina through its insurer members only, without being separately licensed. (1963, c. 1125.)

§ **58-254.13. Forms and rate manuals subject to § 58-249; disapproval of rates.**—The forms of the policies, applications, certificates or other evidence of insurance coverage and the rate manual showing rates, rules and classification of risks applicable thereto shall be subject to the applicable provisions of G. S. 58-249. The Commissioner may disapprove the premium rates for such insurance, or any class thereof, if he finds that such rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the Commissioner shall give due consideration to past and prospective claim experience on such insurance, or other comparable insurance, within and outside this State, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this State, and to all other relevant factors within and outside this State, including any differing operating methods of the insurers joining in the issue of such insurance. In the event of any such disapproval, the decision of the Commissioner shall be subject to review under G. S. 58-9.3. In exercising the powers conferred by this section, the Commissioner shall not be bound by any other requirements of this chapter with respect to standard provisions required to be included in the forms of the policies, applications, certificates or other evidence of insurance coverage filed with the Commissioner. (1963, c. 1125.)

§ **58-254.14. Organization of associations of insurers; powers; annual statements; mutual insurers may participate.**—An association formed for the purposes of this article shall adopt articles of association for the organization, administration and regulation of its affairs, which articles of association and any amendments thereto shall be filed within thirty (30) days of adoption of same with the Commissioner of Insurance. Such association may establish requirements for membership of insurers, hold title to property, incur expenses for advertising, soliciting and administering such insurance, including payment of salary or compensation to persons employed by it, enter into contracts, limit the liability of and among its members, and shall be subject to the provisions of G. S. 1-69.1.

Such association shall file annually with the Commissioner of Insurance, on such date and in such form as the Commissioner may prescribe, a statement with respect to its operations.

For the purpose of implementing joint action of insurers in furnishing accident and health insurance coverage to persons 65 years of age and older and their spouses, in accordance with the intent of this article as expressed herein, insurers operating on a mutual plan, or on any other membership basis, may participate in such a plan, and the persons insured through the plan shall not be entitled to membership in any such insurer nor shall they be entitled to any dividend rights, voting rights, or any other rights peculiar to mutual insurance policyholders and participants in membership insurance plans. (1963, c. 1125.)

§ **58-254.15. No additional licensing required.**—Accident and health insurance authorized by this article and offered by or through an association formed for the purpose of this article may be solicited and offered directly by such association, any insurer member of such association, and by or through any person authorized by the North Carolina Insurance Department to sell accident and health insurance in this State, without any additional license being required. (1963, c. 1125.)

ARTICLE 27.

General Regulations.

§ **58-257. Application.**—(a) On and after January 1, 1956, each individual or family accident, health, hospitalization policy, certificate or service plan of hospitalization and medical and/or dental service corporations shall be issued only on application in writing signed by the insured or the head of the household or guardian. Each application shall also contain the certificate of the agent that he has truly and accurately recorded on the application the information supplied by the insured. Every policy subject to the provisions of this section shall contain as a part of such policy the original or a reproduction of the application required by this section. This section shall not apply to travel or dread disease policies or to policies issued pursuant to a group insurance conversion privilege. If any such policy delivered or issued for delivery to any person in this State shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(1961, c. 1149.)

Editor's Note.—

The 1961 amendment changed subsection (a) to extend the application of this section to dental service corporations. Only subsection (a) is set out.

ARTICLE 27A.

Health Insurance Advisory Board.

§ **58-262.1. Creation of Board.** — There is hereby created the North Carolina Health Insurance Advisory Board. (1961, c. 1044, s. 1.)

§ **58-262.2. Membership of Board; appointment; terms; Commissioner of Insurance ex officio member.**—The membership of said Board shall consist of nine members to be appointed as follows:

(1) Five members of the Board shall be appointed from the public at large by the Governor of North Carolina, and four members of the Board shall be appointed from the insurance industry by the Governor of North Carolina upon the recommendation of the Commissioner of Insurance of North Carolina. All of the members of the Board so appointed shall be citizens and residents of the State of North Carolina.

(2) The term of office of the members of said Board shall be two years, or until their successors are appointed. All original appointments to said Board shall be made on or before September 15, 1961, at which time the original term shall begin.

(3) The Commissioner of Insurance of the State of North Carolina shall be an ex officio member of said Board. (1961, c. 1044, s. 2.)

§ **58-262.3. Organization and other meetings; election of officers; adoption of rules; expenses and per diem paid from Department of Insurance appropriations.**—(a) The Commissioner of Insurance shall call the initial meeting of the Board on or before October 1, 1961, for the purpose of organization of the Board. The Board at its initial meeting shall elect from its membership a chairman and such other officers as it may deem necessary.

(b) The Board shall adopt such rules as it may deem necessary for the discharge of its duties, not inconsistent with law.

(c) The Board may meet at such times and places as the Board may determine; provided, that the Board shall meet at least quarterly during each calendar year.

(d) The expenses and per diem of the Board shall be paid from the appropriation made to the North Carolina Department of Insurance and where funds are insufficient for this purpose, the Commissioner of Insurance shall request additional appropriations for this purpose from the Contingency and Emergency Fund. (1961, c. 1044, s. 3.)

§ **58-262.4. Review of analysis of complaints; calling company before Board to examine its operation and procedure; reprimanding, placing on probation or suspending license; study of health insurance industry and making recommendations.**—The Board shall review an analysis of complaints prepared by the Department of Insurance relating to the health insurance industry at least quarterly during each calendar year.

The Board may call upon any company selling health insurance in the State of North Carolina to appear before the Board when in the opinion of the Board and the Commissioner of Insurance such company is not operating in the public interest, to the end that the Board and the Commissioner may examine their operations and procedures.

If in the opinion of the Board and the Commissioner of Insurance, any company is not operating in the public interest such company may be reprimanded, or placed on probation, or have its license suspended.

The Board shall also make such study of the health insurance industry as it deems necessary to insure better service to the public, and may recommend to the industry such procedures and changes resulting from each study, and the Board may recommend to the Governor of North Carolina for transmission to the General Assembly any legislation that the Board shall deem necessary. (1961, c. 1044, s. 4.)

§ **58-262.5. Immunity of Board and Commissioner of Insurance from civil suit or criminal prosecution.**—The Board and the Commissioner of Insurance shall be immune from civil suit or criminal prosecution as a result of any findings, recommendations or action taken while performing their duties under this article; provided, that any order or decision made by the Board and the Commissioner of Insurance shall be subject to the provisions of § 58-

9.3 of the General Statutes of North Carolina, and the Board shall be subject to said article wherever said section shall refer to the Commissioner of Insurance as fully as if the said Board were referred to in said statute. (1961, c. 1044, s. 5.)

§ 58-262.6. Board may subpoena persons and records, administer oaths and take testimony.—The Board shall have the power to subpoena persons and records necessary to carry out its duties, and shall have the power to administer oaths and take testimony in the performance of its duties. (1961, c. 1044, s. 6.)

§ 58-262.7. Per diem and travel allowances of members. — The members of the Board shall receive as compensation the same per diem allowance given to members of other State commissions and boards while in the actual performance of their duties, and shall receive travel allowance upon the same basis as that given to employees of the State of North Carolina when travelling in the performance of their official duties. (1961, c. 1044, s. 7.)

Chapter 59.

Partnership.

ARTICLE 1.

Uniform Limited Partnership Act.

§ 59-2. Formation.

Partnership General unless Section Complied with.—Where in an action to recover a partnership debt the evidence failed to show either actual or substantial compliance by defendants with the provisions of this section, pertaining to formation of a limited partnership which would relieve them of liability as general partners in the partnership in question, the trial court was correct in giving the jury peremptory instructions in favor of the plaintiff on the issues of general partnership. Atlanta Stove Works, Inc. v. Keel, 255 N. C. 421, 121 S. E. (2d) 607 (1961).

§ 59-17. Liability of limited partner to partnership.

Editor's Note.—The words "waiver of compromise" in line two of subsection (c) of this section in the Recompiled Volume should read "waiver or compromise."

ARTICLE 2.

Uniform Partnership Act.

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.

A partnership is a contractual relation and may be informally created, and its existence may be proved by acts and declarations of the parties. Whiteside v. Rooks, 197 F. Supp. 313 (1961).

Part 5. Property Rights of a Partner.

§ 59-55. Nature of a partner's right in specific partnership property.

The assignment by one partner of all his rights in the partnership to a stranger does not affect the rights of the other partner who is not a party to such assignment, and such assignment cannot transfer title to partnership property. Smithfield Oil Co., Inc. v. Furlonge, 257 N. C. 388, 126 S. E. (2d) 167 (1962).

Applied in Prentzas v. Prentzas, 260 N. C. 101, 113 S. E. (2d) 678 (1963).

Chapter 60.

Railroads and Other Carriers.

Sec.
60-1 to 60-81. [Repealed.]
60-82 to 60-87. [Transferred.]
60-88 to 60-146. [Repealed.]

§§ **60-1 to 60-81**: Repealed by Session Laws 1963, c. 1165, s. 1, effective January 1, 1964.

Editor's Note. — Session Laws 1963, c. 1165, amended, revised and rewrote chapters 56, 60 and 62 of the General Statutes and recodified them as a new chapter 62 and a new chapter 74A.

§§ **60-82 to 60-87**: Transferred to §§ 74A-1 to 74A-6 by Session Laws 1963, c. 1165, s. 2, effective January 1, 1964.

§§ **60-88 to 60-146**: Repealed by Session Laws 1963, c. 1165, s. 1, effective January 1, 1964.

Chapter 62.

Public Utilities.

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ARTICLE 1.

General Provisions.

§ **62-1. Short title.**—This chapter shall be known and may be cited as the Public Utilities Act. (1963, c. 1165, s. 1.)

Editor's Note. — Session Laws 1963, c. 1165, amends, revises and rewrites chapters 56, 60 and 62 of the General Statutes and recodifies them as a new chapter 62 and a new chapter 74A. New §§ 62-10, 62-14, 62-15, 62-20, 62-21, 62-49 and 62-135 became effective July 1, 1963. The remainder of this chapter is effective January 1, 1964.

Cases construing provisions of former chapter 62 have been placed in the annotations under appropriate sections of the new chapters.

For case law survey on public utilities, see 41 N. C. Law Rev. 498.

§ **62-2. Declaration of policy.**—Upon investigation, it has been determined that the rates, services and operations of public utilities, as defined herein, are affected with the public interest and it is hereby declared to be the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, to promote the inherent advantage of regulated public utilities, to promote adequate, economical and efficient utility services to all of the citizens and residents of the State, to provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, to encourage and promote harmony between public utilities and their users, to foster a State-wide planning and coordinating program to promote continued growth of economical public utility services, to cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility services, and to these ends, to vest authority in the Utilities Commission to regulate public utilities generally and their rates, services and operations, in the manner and in accordance with the policies set forth in this chapter. (1963, c. 1165, s. 1.)

§ **62-3. Definitions.**—As used in this chapter, unless the context otherwise requires, the term:

(1) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or

agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

(2) "Certificate" means a certificate of public convenience and necessity issued by the Commission pursuant to the provisions of this chapter to a public utility.

(3) "Certified mail" means such mail only when a return receipt is requested.

(4) "Charter party," with regard to motor carriers, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(5) "Commission" means the North Carolina Utilities Commission.

(6) "Common carrier" means any person which holds itself out to the general public to engage in transportation of persons or property for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in § 62-260.

(7) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in § 62-260.

(8) "Contract carrier by motor vehicle" means any person which, under individual contracts or agreements, engages in the transportation, other than transportation referred to in paragraph (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in § 62-260.

(9) "Contract carrier" means any person which under individual contracts or agreements engages in the transportation of persons or property for compensation, except as exempted in § 62-260.

(10) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(11) "Franchise" means the grant of authority by the Commission to any person to engage in business as a public utility or contract carrier, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes certificates and permits, and all other forms of licenses or orders and decisions granting such authority.

(12) "Highway" means any road or street in this State used by the public or dedicated or appropriated to public use.

(13) "Industrial plant" means any plant, mill, or factory engaged in the business of manufacturing.

(14) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

(15) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or

foreign commerce which has been exempted by Congress from federal regulation.

(16) "Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.

(17) "Motor carrier" means both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(18) "Motor vehicle" means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.

(19) "Municipality" means any incorporated community, whether designated in its charter as a city, town, or village.

(20) "Permit" means a permit issued by the Commission pursuant to the provisions of this chapter to a contract carrier by motor vehicle.

(21) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.

(22) "Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation;
2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than twenty-five (25) residential customers;
3. Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G. S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term "public utility" shall for rate making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G. S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term "public utility", except as otherwise expressly provided in this chapter, shall not include a municipality, electric or telephone membership corporation or any person not otherwise a public utility, who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this chapter.

(24) "Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.

(25) "Route" means the course or way which is traveled; the road or highway over which motor vehicles operate.

(26) "Securities" means stock, stock certificates, bonds, notes, debentures, or other evidences of ownership or of indebtedness, and any assumption or guaranty thereof.

(27) "Service" means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.

(28) The word "State" means the State of North Carolina; "state" means any state.

(29) "Town" means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated. (1913, c. 127, s. 7; C. S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1.)

Comparison of Definitions in Federal Motor Carrier Act and Bus Act of 1949.—See State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Provision Not Retroactive.—The definition of "contract carrier" in the Bus Act of 1949 was definitive or regulatory and intended to be applied prospectively with respect to applications for permits as contract carriers under the general provisions of the Bus Act, and had no bearing on or relation to the grandfather rights confirmed in the act. To make these definitive and regulatory provisions retroactive so as to place a limitation on the rights of a carrier under the grandfather clause contained in the act, would be in contravention of his constitutional rights and contrary to due process of law. Moreover, such a construction would completely nullify the grandfather clause and make it feckless. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

The definition of "contract carrier" includes charter service. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Lessor of Vehicles Held Not Contract Carrier. — Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of the statute as it stood in 1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the "for hire" rates under the statute. Equipment Finance Corp. v. Schedt, 249 N. C. 334, 106 S. E. (2d) 555 (1959).

Service.—As to "service" rendered in contemplation of former statute, see State v. Andrews, 191 N. C. 545, 132 S. E. 568 (1926).

Where parties constructed water mains from end of municipal lines to their properties, permitting others to tap into the mains, and the municipality installed meters and furnished water to the others directly, parties were not public utilities within the Public Utilities Act of 1933 so as to give the Utilities Commission jurisdiction. State v. New Hope Road Water Co., 248 N. C. 27, 102 S. E. (2d) 377 (1958).

Applied in City Coach Co. v. Gastonia Transit Co., 227 N. C. 391, 42 S. E. (2d) 398 (1947).

§ **62-4. Applicability of chapter.**—This chapter shall not terminate the pre-existing Commission or appointments thereto, or any certificates, permits, orders, rules or regulations issued by it or any other action taken by it, unless and until revoked by it, nor affect in any manner the existing franchises, territories, tariffs, rates, contracts, service regulations and other obligations and rights of public utilities, unless and until altered or modified by or in accordance with the provisions of this chapter. (1963, c. 1165, s. 1.)

§§ **62-5 to 62-9:** Omitted.

ARTICLE 2.

Organization of Utilities Commission.

§ **62-10. Number, appointment and terms of commissioners; chairman; vacancies; compensation; practice of law prohibited.**—The North Carolina Utilities Commission shall consist of five commissioners who shall be appointed by the Governor. The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed. The appointments to fill the term expiring on July 1, 1963, and the two terms expiring July 1, 1965, shall be for eight (8) years, and the appointments to fill the two terms expiring July 1, 1967, shall be for two (2) years, and thereafter for eight (8) years, with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The term of office of utilities commissioners thereafter shall be eight (8) years, commencing on July 1 of the year in which the predecessor term expired, and ending on July 1 of the eighth year thereafter. A commissioner in office shall continue to serve until his successor is duly appointed and qualifies but such hold over shall not affect the expiration date of such succeeding term. On July 1, 1963, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission until July 1, 1965, and on July 1, 1965, and every four (4) years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four (4) years and until his successor is appointed and qualifies. In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner or the chairman prior to the expiration of his term of office or the time for which he was designated as chairman, his successor shall be appointed by the Governor to fill the unexpired term. The salary of each commissioner shall be the same as that fixed from time to time for the highest paid member of the Council of State except that the commissioner designated as chairman shall receive one thousand dollars ($1,000.00) additional per annum. The prohibition of the practice of law by judges provided in G. S. 7-59 shall also apply to members of the Commission. (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

The Railroad Commission, established in 1891, became the Corporation Commission in 1899. See Consolidated Statutes, §§ 1023-

1034; Abbott v. Beddingfield, 125 N. C. 256, 34 S. E. 412 (1899); Corporation Comm. v. Railroad, 137 N. C. 1, 49 S. E. 191 (1904); 2 N. C. Law Rev. 70. The above-mentioned sections were repealed by Public Laws 1933, c. 134, which created the office of Utilities Commissioner and vested in the Commissioner all of the existing powers, duties, etc., of the former Corporation Commission. The act also provided for two Associate Commissioners to act with the Commissioner in certain instances for the purpose of hearing and determining matters or issues of fact. The office of Utilities Commissioner was abolished by Public Laws 1941, c. 97, which created the North Carolina Utilities Commission and vested said Commission with all the powers, duties, etc., of the Utilities Commissioner, or the Utilities Commissioner and the Associate Commissioners, prescribed in Public Laws 1933, c. 134, and other laws. The 1941 act further provided that the words "North Carolina Utilities Commission" should be substituted for "Utilities Commissioner," etc., throughout said chapter 134 or other act amendatory thereof.

§ 62-11. Oath of office.—Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-12. Organization of Commission; adoption of rules and regulations therefor.—To facilitate the work of the Commission and for administrative purposes, the chairman of the Commission, with the consent and approval of the Commission, may organize the work of the Commission in several hearing divisions and operating departments and may designate a member of the Commission as the head of any division or divisions and assign to members of the Commission various duties in connection therewith. Subject to the provisions of the State Personnel Act (article 2 of chapter 143 of the General Statutes), the Commission shall prepare and adopt rules and regulations governing the personnel, departments or divisions and all internal affairs and business of the Commission. (1941, c. 97, s. 3; 1949, c. 1009, s. 2; 1957, c. 1062, s. 1; 1963, c. 1165, s. 1.)

§ 62-13. Chairman to administer and execute internal rules and regulations, and direct staff.—(a) In order to carry out the administrative purposes and objectives necessary for the efficient operation of the internal affairs and activities of the Commission, the chairman shall be the chief executive and administrative officer of the Commission, and shall execute, administer and carry out the rules and regulations prepared and adopted by the Commission governing the personnel, departments, or divisions and the internal affairs and business of the Commission.

(b) The chairman shall determine whether matters pending before the Commission shall be heard initially by the full Commission, by a division of the Commission or by a hearing commissioner or hearing examiner and shall assign the members of the Commission to proceedings. The chairman may hear and determine, or assign to a single commissioner or division for decision, any procedural motion or petition made prior to hearings on the merits of the proceeding, including continuances, extensions, joinders, amendments, motions to strike, orders for examinations and depositions, temporary orders and other motions and orders of a similar nature not determinative of the merits of the controversy.

(c) The chairman acting alone, or any three commissioners, may intiate any investigations, complaints or any other proceedings within the jurisdiction of the Commission.

(d) The chairman shall be solely responsible for and charged with the duties of authorizing and approving all maintenance, subsistence and travel expense of all members of the Commission and its employees, and such expense shall be certified by the persons who incur same; the chairman shall not approve any such expense unless he is satisfied that it was incurred for necessary business of the Commission and the chairman may require the department or division heads to certify to him approval of such expense for employees in their departments or divisions. (1941, c. 97, s. 4; 1957, c. 1062, s. 2; 1963, c. 1165, s. 1.)

§ **62-14. Economic and statistical studies.**—The Commission shall make economic and financial studies and surveys of the public utility services in the State and evaluations of future needs for such services, and shall establish an economics and planning section within the Commission staff to compile financial and economic data and statistics and to perform economic research and analysis for the Commission. (1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

§ **62-15. Authority of Commission to employ technically qualified personnel.**—The Commission is authorized and empowered to employ technically qualified personnel to serve as members of its staff and under its direction and supervision, including a communications engineer, an electrical engineer, a gas and water engineer, a director of accounting, a director of traffic, a director of economics and planning, a transportation expert and such other experts as the Commission may determine to be necessary in the proper discharge of the Commission's duties as prescribed by law. (1949, c. 1009, s. 3; 1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

For brief comment on section, see 27 N. C. Law Rev. 489.

§ **62-16. Special investigators; clerical assistance.**—The Commission shall be allowed such stenographic and other clerical assistance, and special investigators, as it may require for the performance of the duties and functions of the said office, to be established and fixed by such department, bureau, or other State agency as may be charged by law with the duty of determining the extent of such assistance in said departments. All such stenographers, clerks, assistants, and special investigators so provided for shall be appointed by the Commission and subject to removal or discharge by it. The salaries and compensation of such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State departments. (1933, c. 134, s. 14; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to determination of extent of assistance and regulation of salaries of stenographers, see §§ 143-36 and 143-37.

§ **62-17. Annual reports; monthly or quarterly release; publication of procedural orders and decisions.**—(a) It shall be the duty of the Commission to make and publish annual reports to the Governor of Commission activities, including copies of its general orders and regulations, comparative statistical data on the operation of the various public utilities in the State, comparisons of rates in North Carolina with rates elsewhere, a detailed report of its investigative division, a review of significant developments in the fields of utility law, economics and planning, a report of pending matters before the Commission, and a digest of the principal decisions of the Commission and the North Carolina courts affecting public utilities. A monthly or quarterly release of such information shall be made if the Commission deems it advisable or if the Governor shall so request.

(b) The Commission shall publish in a separate volume at least once each year its final decisions made on the merits in formal proceedings before the Commission, and may include significant procedural orders and decisions. (1899, c. 164, s. 27; Rev., s. 1117; 1911, c. 211, s. 9; 1913, c. 10, s. 1; C. S., s. 1065; 1933, c. 134, s. 8; 1941, c. 97; 1955, c. 981; 1957, c. 1152, s. 1; 1963, c. 1165, s. 1.)

Matters of Public Record.—Reports of the Corporation Commission (now Utilities Commission) of North Carolina are matters of public record, of which the courts therein will take judicial notice. Staton v. Atlantic Coast Line R. Co., 144 N. C. 135, 56 S. E. 794 (1907).

§ 62-18. Records of receipts and disbursements; payment into treasury.—(a) The Commission shall keep a record showing in detail all receipts and disbursements.

(b) All license fees and seal taxes, all money received from fines and penalties, and all other fees paid into the office of the Utilities Commission shall be turned in to the State treasury. (1899, c. 164, ss. 26, 33, 34; Rev., ss. 1114, 1115; C. S., ss. 1063, 1064; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-19. Public record of proceedings; chief clerk; seal.—(a) The Commission shall keep in its office at all times a record of its official acts, rulings, determinations and transactions, which shall be public records of the State of North Carolina.

(b) The Commission shall have and appoint a chief clerk, who shall file with the Secretary of State an oath of office similar to that prescribed for utilities commissioners. The Commission may appoint a deputy clerk to act in the absence of the chief clerk, who shall also file such oath with the Secretary of State. The chief clerk and such deputy clerk shall serve at the pleasure of the Commission.

(c) The Commission shall have and adopt a seal with the words "North Carolina Utilities Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings and of which the courts shall take judicial notice. Where an exemplified copy of Commission records and proceedings is required for full faith and credit outside of the State, such records and proceedings shall be attested by the chief clerk, or deputy clerk, and the seal of the Commission annexed, and there shall be affixed a certificate of a member of the Commission that the said attestation is in proper form. Such exemplification shall constitute an authenticated or exemplified copy of an official record of a court of record of the State of North Carolina. (1933, c. 134, ss. 13, 15; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-20. Assistant attorney general and staff attorneys assigned to Utilities Commission; to represent public; employment of additional attorneys, expert witnesses, office and clerical help.—The Attorney General shall assign an assistant attorney general and such staff attorneys as may be necessary to the handling of matters and proceedings before the Commission, who shall be under the direction of the Attorney General. Such assistant attorney general shall be assigned the duty and responsibility, when the Attorney General deems it to be advisable in the public interest, of intervening in proceedings before the Commission on behalf of the using and consuming public, including utility users generally and agencies of the State, such appearances including, but not being limited to, rate applications, rate changes and curtailments of service. He shall also have the authority to institute and originate proceedings before the Commission in the name of the State, its agencies and citizens, in all matters within the jurisdiction of the Commission, and shall have authority to appear before such other State and federal agencies and courts as he deems advisable on behalf of the State and its agencies and citizens in all matters affecting public utility services. He shall have the assistance and cooperation of the Commission's staff, when available, and access to the Commission's books, records, studies and reports. In the performance of the duties set forth in this section the Attorney General shall have the right to employ additional attorneys, expert witnesses and office and clerical help and to incur expenses in connection therewith, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund. The Commission shall furnish the Attorney General with copies of all applications, petitions and pleadings filed with it by public utilities doing business in this State or by any other persons in matters affecting the duties under this section. (1949, c. 989, s. 1; c. 1029, s. 3; 1959, c. 400; 1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

For brief comment on earlier section, see 27 N. C. Law Rev. 489.

§ **62-21. Commission attorney.**—(a) The Commission is authorized to employ an attorney, to be known as the Commission attorney, to perform legal services for the Commission in proceedings and matters before the Commission, and to do research with respect to applicable utility laws for and on behalf of the Commission. The Commission attorney shall represent the Commission on appeal from any Commission orders and shall represent the Commission before the various State and federal agencies and courts. He shall perform such other legal services for the Commission as the chairman and the members of the Commission shall request.

(b) In any hearing or proceeding in which the Commission exercises any function judicial in nature, the Commission attorney, by leave of the Commission, may appear before the Commission in connection with the presentation of evidence and as an advocate, but after such leave is granted, he shall not advise with the Commission or participate in any manner in the determination or adjudication by the Commission of the issues in such hearing or proceeding. (1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

§ **62-22. Utilities Commission and State Board of Assessment to coordinate facilities for rate making and taxation purposes.**—The Commission, at the request of the State Board of Assessment, shall make available to the State Board of Assessment the services of such of the personnel of the Commission as may be desired and required for the purpose of furnishing to the State Board of Assessment advice and information as to the value of properties of public utilities, the valuations of which for ad valorem taxation are required by law to be determined by the State Board of Assessment. It shall be the duty of the Commission and the State Board of Assessment, with regard to the assessment and valuation of properties of public utilities doing business in North Carolina, to coordinate the activities of said agencies so that each of them shall receive the benefit of the exchange of information gathered by them with respect to the valuations of public utilities property for rate making and taxation purposes, and the facilities of each of said agencies shall be made fully available to both of them. (1949, c. 1029, s. 3; 1963, c. 1165, s. 1.)

§ **62-23. Commission as an administrative board or agency.**—The Commission is hereby declared to be an administrative board or agency of the General Assembly created for the principal purpose of carrying out the administration and enforcement of this chapter, and for the promulgation of rules and regulations and fixing utility rates pursuant to such administration; and in carrying out such purpose, the Commission shall assume the initiative in performing its duties and responsibilities in securing to the people of the State an efficient and economic system of public utilities in the same manner as commissions and administrative boards generally. In proceedings in which the Commission is exercising functions judicial in nature, it shall act in a judicial capacity as provided in § 62-60. The Commission shall separate its administrative or executive functions, its rule making functions, and its functions judicial in nature to such extent as it deems practical and advisable in the public interest. (1963, c. 1165, s. 1.)

§§ 62-24 to 62-29: Omitted.

Article 3.

Powers and Duties of Utilities Commission.

§ 62-30. General powers of Commission.—The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties. (1933, c. 134, s. 2; 1941, c. 97; 1963, c. 1165, s. 1.)

Editor's Note.—The Railroad Commission, established in 1891, became the Corporation Commission in 1899. See Consolidated Statutes, §§ 1023-1034; Abbott v. Beddingfield, 125 N. C. 256, 34 S. E. 412 (1899); Corporation Comm. v. Railroad, 137 N. C. 1, 49 S. E. 191 (1904); 2 N. C. Law Rev. 70. The above-mentioned sections were repealed by Public Laws 1933, c. 134, which created the office of Utilities Commissioner and vested in the Commissioner all of the existing powers, duties, etc., of the former Corporation Commission. The act also provided for two Associate Commissioners to act with the Commissioner in certain instances for the purpose of hearing and determining matters or issues of fact. The office of Utilities Commissioner was abolished by Public Laws 1941, c. 97, which created the North Carolina Utilities Commission and vested said Commission with all the powers, duties, etc., of the Utilities Commissioner, or the Utilities Commissioner and the Associate Commissioners, prescribed in Public Laws 1933, c. 134, and other laws.

For comment on this and the subsequent section, see 12 N. C. Law Rev. 292.

Legislative Power to Regulate Public Utilities.—The general power of the legislature to provide reasonable rules and regulations, directly or through a commission, has been upheld in Atlantic Exp. Co. v. Wilmington, etc., Railroad, 111 N. C. 463, 16 S. E. 393, 32 Am. St. Rep. 805 (1892); Corporation Comm. v. Seaboard Air Line System, 127 N. C. 283, 37 S. E. 266 (1900). See Corporation Comm. v. Railroad, 137 N. C. 1, 49 S. E. 191 (1904).

The power of the legislature, either directly or through appropriate governmental agencies, to establish reasonable regulations for public service corporations in matters affecting the public interests is now universally recognized, and the principle has been approved in well considered decisions dealing directly with the question. Corporation Comm. v. Railroad, 137 N. C. 1, 49 S. E. 191 (1904); Corporation Comm. v. Seaboard Air Line Railroad, 140 N. C. 239, 52 S. E. 941 (1905); Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 314 (1911), affirmed in 232 U. S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914); In re Southern Public Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919).

The reason for strict regulation of public utilities is that they are either monopolies by nature or given the security of monopolistic authority for better service to the public. The public is best served in many circumstances where destructive competition has been removed and the utility is a regulated monopoly. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

No Interference with Interstate Commerce.—The former Railroad Commission, being concerned solely in domestic affairs and trade, did not interfere with interstate commerce. Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897).

The Commission has no jurisdiction over parties unless they are public utilities within the meaning of the statute. State v. New Hope Road Water Co., 248 N. C. 27, 102 S. E. (2d) 377 (1958).

Whether there shall be competition in any given field and to what extent is largely a matter of policy committed to the sound judgment and discretion of the Commission. The Commission must maintain a reasonable balance to see that the public is adequately served and at the same time to see that the public and the public utilities involved are not prejudiced by the effects which flow from excessive competition brought about by excessive services. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Commission Can Authorize Sale of Facilities of Power Company to Municipality.—A power company, with the consent and approval of the Commission, has the right to sell its facilities to a city, and thereby permit the city to assume the obligation for meeting the public convenience and necessity for the service theretofore rendered by the power company. The Commission has not only the authority but the duty to pass upon such a contract and to determine whether or not it is in the public interest to permit its consummation. State v. Casey, 245 N. C. 297, 96 S. E. (2d) 8 (1957); Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Applied in City Coach Co. v. Gastonia Transit Co., 227 N. C. 391, 42 S. E. (2d) 398 (1947).

§ 62-31. Power to make and enforce rules and regulations for public utilities.—The Commission shall have and exercise full power and authority to administer and enforce the provisions of this chapter, and to make and enforce reasonable and necessary rules and regulations to that end. (1907, c. 469, s. 1a; 1913, c. 127, s. 2; C. S., s. 1037; 1933, c. 134, s. 8; 1941, c. 97; 1947, c. 1008, s. 2; 1949, c. 1132, s. 3; 1963, c. 1165, s. 1.)

Legislative Intent.—There was no intention to give a schedule of the thousands of appliances used in handling the business of common carriers, not to enumerate the countless dealings between them and their patrons, which the former Corporation Commission should supervise. The clearly declared purpose was to put the control and supervision of the whole matter in the hands of an impartial commission, with power to make reasonable rules and orders, subject to the right of appeal by either party, the shipper or the carrier, to the courts, instead of leaving such dealing to the unrestricted will of the carrier. Corporation Comm. v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793 (1905).

Power to Make Orders and Regulations.—The former Corporation Commission was given the power to make orders and regulations for the safety, etc., of shippers or patrons of any public service corporation. Tilley v. Norfolk, etc., R. Co., 162 N. C. 37, 77 S. E. 994 (1913).

Commission Has Jurisdiction to Investigate with or without Complaint. — The Commission had the jurisdiction to investigate, upon complaint or upon its own initiative without complaint, to determine whether any motor carrier was operating in violation of the provisions of the Bus Act of 1949, as amended. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Rule Denying Rights under Grandfather Clause.—The Utilities Commission did not have the power to promulgate a rule and then to interpret or enforce the rule in such manner as to deny the exercise of rights which the legislature in clear and express terms preserved to all motor vehicle carriers of property who were in bona fide operation on January 1, 1947, and who met the additional requirements contained in the Bus Act of 1949. State v. Fox, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

§ 62-32. Supervisory powers; rates and service. — (a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service. (1963, c. 127, s. 7; C. S., s. 1112(b); 1933, c. 134, s. 3; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1959, c. 639, s. 12; 1963, c. 1165, s. 1.)

I. General Consideration.
II. Railroads and Other Common Carriers.
III. Telephone and Telegraph Companies.

I. GENERAL CONSIDERATION.

Cross References. — As to municipal control of public utilities, see §§ 160-282 to 160-285. As to report from municipality operating own utilities, see § 62-47.

This section is similar to former § 1035 of the Consolidated Statutes. Most of the following cases were decided under that section and are given as an aid in construing the present law, but should be considered in the light of the former law.

Right of State to Regulate.—The right of the State to establish regulations for public service corporations, and over business enterprises in which the owners, corporate or individual, have devoted their property to a public use, and to enforce these regulations by appropriate penalties, is firmly established. Efland v. Southern R. Co., 146 N. C. 135, 59 S. E. 355 (1907). See Whiting Mfg. Co. v. Carolina Aluminum Co., 207 N. C. 52, 175 S. E. 698 (1934).

Classification Must Not Be Arbitrary.—As to intrastate or domestic matters, the General Assembly has the right to establish regulations for public service corporations and for business enterprises in which the owners have devoted their property to public use, and to apply these regulations to certain classes of pursuits and occupations, imposing these requirements equally on all members of a given class, the limitation of this right of classification being that the same must be on some reasonable ground that bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. Efland v. Southern R. Co., 146 N. C. 135, 59 S. E 355 (1907).

Scope of Power Delegated to Commission Not a Federal Question.—Whether a regulation of a state railroad commission otherwise legal is arbitrary and unreasonable because beyond the scope of the power delegated to the commission is not a federal question. Atlantic Coast Line R. Co., v. North Carolina Corp. Comm., 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

Fees and Charges Made by Municipality.—The North Carolina Utilities Commission has no jurisdiction to fix or supervise the fees and charges to be made by a municipality for connections with a city sewerage system, either within or without its corporate limits. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949). See Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

A rider approved by the Commission, which provided that the utility involved in a rate hearing would meter the protesting municipalities separately for purchases by the municipalities for normal resale and purchases by the municipalities for resale to industrial users, but which contained a provision that the municipalities were free to contract in respect to the price they would require the industrial users to pay, did not fix the rate at which the municipalities would be required to sell to industrial users in violation of the statute. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

A sanitary district which, as a part of its functions, furnishes drinking water to the public and also filtered water for industrial consumers is a quasi-municipal corporation, and is not under the control and supervision of the North Carolina Utilities Commission as to services or rates. Halifax Paper Co. v. Roanoke Rapids Sanitary Dist., 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Applied in City Coach Co. v. Gastonia Transit Co., 227 N. C. 391, 42 S. E. (2d) 398 (1947); Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953); State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

II. RAILROADS AND OTHER COMMON CARRIERS.

Legislature May Regulate Directly or Indirectly.—Railroad companies from the public nature of the business by them carried on, and the interest which the public has in their operation, are subject as to their State business to State regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end. Atlantic Coast Line R. Co. v. North Carolina Corp. Comm., 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

Rate Fixing Power May Be Delegated.—The General Assembly has the power to establish a commission to supervise and regulate the rates of common carriers. Atlantic Exp. Co. v. Wilmington, etc., Railroad, 111 N. C. 463, 16 S. E. 393 (1892); Corporation Comm. v. Seaboard Air Line System (Rate Case), 127 N. C. 283, 37 S. E. 266 (1900); Corporation Comm. v. Railroad, 137 N. C. 114, 49 S. E. 191 (1904); Corporation Comm. v. Atlantic Coast Line R. Co. ("Track Scales Case"), 139 N. C. 126, 51 S. E. 793 (1905); Corporation Comm. v. Seaboard Air Line Railroad, 140 N. C. 239, 52 S. E. 941 (1905).

When State May Regulate Interstate Commerce.—The power of Congress over commerce between the states is, as a general rule, exclusive, and its inaction is equivalent to a declaration that it shall be free from any restraint which it has the right to impose, except by such statutes as are passed by the states for the purpose of facilitating the safe transmission of goods and carriage of passengers, and are not in conflict with any valid federal legislation. Morris, etc., Co. v. Southern Exp. Co., 146 N. C. 167, 59 S. E. 667 (1907).

General Power of Commission over Railroads.—The former Corporation Commission had general control and supervision of all railroad corporations. Tilley v. Norfolk, etc., R. Co., 162 N. C. 37, 77 S. E. 994 (1913).

Power to Appraise and Assess. — The former Corporation Commission was not clothed with the power of appraising and assessing railroad property. Southern R. Co. v. North Carolina Corp. Comm., 97 F. 513 (1899).

When Power to Regulate Arbitrarily Exercised.—The public power to regulate railroads and the private right of ownership of such property coexist, and the one does not destroy the other; and where the power to regulate is so arbitrarily exercised as to infringe the rights of ownership the exertion is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. Atlantic Coast Line R. Co. v North Carolina Corp. Comm., 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

When Duty of Railroad Entails Pecuniary Loss.—The State has power to compel a railroad company to perform a particular and specified duty necessary for the convenience of the public even though it may entail some pecuniary loss. Atlantic Coast Line R. Co. v. North Carolina Corp. Comm., 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

III. TELEPHONE AND TELEGRAPH COMPANIES.

Telephone Company Subject to State Control.—A telephone company, acting under a quasi-public franchise, is properly classified among the public service corporations, and as such is subject to public regulation and reasonable control. Leavell v. Western Union Tel. Co., 116 N. C. 211, 21 S. E. 391 (1895); Godwin v. Carolina Tel. Co., 136 N. C. 258, 48 S. E. 813 (1904); Clinton-Dunn Tel. Co. v. Carolina Tel., etc., Co., 159 N. C. 9, 74 S. E. 636 (1912).

A local telephone company having an arrangement for the transmission of long distance messages over the lines of another company for pay is a public service corporation and comes within the provisions of this section. Horton v. Interstate Tel., etc., Co., 202 N. C. 610, 163 S. E. 694 (1932).

Jurisdiction of Court Not Ousted.—The statute giving general control of telephone companies to the former Corporation Commission did not oust the court of its jurisdiction to compel the company to perform a public duty it owed to an individual. Walls v. Strickland, 174 N. C. 298, 93 S. E. 857 (1917).

When Telegram Not Interstate Commerce.—See State v. Western Union Tel. Co., 113 N. C. 213, 18 S. E. 389 (1893); Leavell v. Western Union Tel. Co., 116 N. C. 211, 21 S. E. 391 (1895).

§ 62-33. Commission to keep informed as to utilities. — The Commission shall at all times keep informed as to the public utilities, their rates and charges for service, and the service supplied and the purposes for which it is supplied. (1933, c. 134, s. 16; 1937, c. 165; 1939, c. 365, ss. 1, 2; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-34. To investigate companies under its control; visitation and inspection.—(a) The Commission shall from time to time visit the places of business, and investigate the books and papers of all public utilities to ascertain if all the orders, rules and regulations of the Commission have been complied with, and shall have full power and authority to examine all officers, agents and employees of such public utilities, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this chapter.

(b) The commissioners and the officers and employees of the Commission may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examinations, tests and inspections. (1899, c. 164, s. 1; Rev., s. 1064; 1913, c. 127, ss. 1, 2, 7; 1917, c. 194; C. S., s. 1060; 1933, c. 134, s. 8; c. 307, s. 14; 1941, c. 97; 1963, c. 1165, § 1.)

§ **62-35. System of accounts.**—(a) The Commission may establish a system of accounts to be kept by the public utilities under its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner of keeping such accounts.

(b) The Commission may require any public utility under its jurisdiction to keep separate or allocate the revenue from and the cost of doing interstate and intrastate business in North Carolina.

(c) The Commission may ascertain, determine, and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility. The Commission may prescribe such changes in such charges for depreciation as it finds necessary. (Ex. Sess. 1913, c. 20, s. 14; C. S., s. 1088; 1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 13; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-36. Reports by utilities; cancelling certificates for failure to file.**—The Commission may require any public utility to file annual reports in such form and of such content as the Commission may require and special reports concerning any matter about which the Commission is authorized to inquire or to keep informed, or which it is required to enforce. All reports shall be under oath when required by the Commission. The Commission may issue an order, without notice or hearing, cancelling or suspending any certificate of convenience and necessity thirty (30) days after the date of service of the order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty-day period, the order of cancellation or suspension shall be null and void. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 15; 1941, c. 97; 1959, c. 639, ss. 7, 8; 1963, c. 1165, s. 1.)

§ **62-37. Investigations.**—(a) The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or of any particular public utility. In conducting such investigation the Commission may proceed either with or without a hearing as it may deem best, but shall make no order without affording the parties affected thereby notice and hearing.

(b) If after such an investigation, or investigation and hearing, the Commission, in its discretion, is of the opinion that the public interest shall be served by an appraisal of any properties in question, the investigation of any particular construction, the audit of any accounts or books, the investigation of any contracts, or the practices, contracts or other relations between the public utility in question and any holding or finance agency with which such public utility may be affiliated, it shall be the duty of the Commission to report its findings and recommendation to the Governor and Council of State with request for an allotment from the Contingency and Emergency Fund to defray the expense thereof, which may be granted as provided by law for expenditures from such Fund or may be denied. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 16; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-38. Power to regulate public utilities in municipalities.**—The Commission shall have the same power and authority to regulate the operation of privately owned public utilities within municipalities as it has to regulate such public utilities operating outside of municipalities, with the exception of the rights of such municipalities to grant franchises for such operation under G. S. 160-2, paragraph 6, and such public utilities shall be subject to the provisions of this chapter in the same manner as public utilities operating outside municipalities. (1917, c. 136, subch. ss. 1-3; C. S., ss. 2783, 2784, 2785; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Municipal Charter Is Subject to State Powers.—The power conferred by a city charter "to provide water and lights and to contract for same" is subject to the police power of the State, with respect to rates to be charged by a public service corporation under such contract as the city may make under its charter. Corporation Comm. v. Henderson Water Co., 190 N. C. 70, 128 S. E. 465 (1925).

And Contract Rate May Be Changed.—Although the rate to be charged for water is stipulated by contract between a city and a water company, this may be changed by the Commission if it appears that the rate contracted for is too low, and the one fixed by the Commission is just. The burden of proof is on the one alleging that the rate fixed by the Commission is unreasonable. Corporation Comm. v. Henderson Water Co., 190 N. C. 70, 128 S. E. 465 (1925).

Right to Injunction against Commission.—A public service corporation, having a contract with a city, applying to the Commission for the increase of the rate contracted for with the city and obtaining partial relief, will not be granted an injunction by the federal court against the Commission on the grounds that the rate is confiscatory, for such increase as is allowed by the Commission is that much more than could have been received under the contract with the city had the Commission refused to act. Henderson Water Co v. Corporation Comm., 269 U. S. 278, 46 S. Ct. 112, 70 L. Ed. 273 (1925).

§ 62-39. To regulate crossings of telephone, telegraph, electric power lines and pipelines and rights of way of railroads and other utilities by another utility.—(a) The Commission, upon its own motion or upon petition of any public utility or upon petition of the North Carolina Rural Electrification Authority on behalf of any electric membership corporation, shall have the power and authority, after notice and hearing, to order that the lines and right of way of any public utility or electric membership corporation may be crossed by any other public utility or electric membership corporation. The Commission, in all such cases, may require any such crossings to be constructed and maintained in a safe manner and in accord with accepted and approved standards of safety and may prescribe the manner in which such construction shall be done.

(b) The Commission shall also have the power and authority to discontinue and prohibit such crossings where they are unnecessary and can reasonably be avoided and to order changes in existing crossings when deemed necessary.

(c) In all cases in which the Commission orders such crossings to be made or changed and when the parties affected cannot agree upon the cost of the construction of such crossings or the damages to be paid to one of the parties for the privilege of crossing the lines of such party, it shall be the duty of the Commission to apportion the cost of such construction and to fix the damage, if any, to be paid and to apportion the damages, if any, among the parties in such manner as may be just and equitable.

(d) This section shall not be construed to limit the right of eminent domain conferred upon public utilities and electric membership corporations by the laws of this State or to limit the right and duty conferred by law with respect to crossing of railroads and highways or railroads crossing railroads, but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law. Any party shall have the right of appeal from any final order or decision or determination of the Commission as provided by law for appeals from orders or decisions or final determinations of the Commission. (1913, c. 130, s. 1; C. S., s. 1052; 1933, c. 134, s. 8; 1941, c. 97; 1949, c. 1029, s. 1; 1963, c. 1165, s. 1.)

Local Modification.—Ashe: 1929, c. 101.

§ 62-40. To hear and determine controversies submitted.—When a public utility embraced in this chapter has a controversy with another person, and all the parties to such controversy agree in writing to submit such controversy to the Commission as arbitrator, the Commission shall act as such, and after due notice to all parties interested shall proceed to hear the same, and its award shall be final. Such award in cases where land or an interest in land is concerned shall immediately be certified to the clerk of the superior court of the county or counties in which said land, or any part thereof, is situated, and shall by such clerk be docketed in the judgment docket for such county, and from such docketing shall have the same effect as a judgment of the superior court for such county. Parties may appear in person or by attorney before such arbitrator. (1899, c. 164, s. 25; Rev., s. 1073; C. S., s. 1059; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to power of Utilities Commission to settle dispute between railroad and drainage district, see § 156-91.

§ **62-41. To investigate accidents involving public utilities; to promote general safety program.**—The Commission may conduct a program of accident prevention and public safety covering all public utilities with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a railroad or highway involving a public utility, or any accident in connection with any other public utility. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Commission, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Commission may adopt reasonable rules and regulations for the safety of the public as affected by public utilities and the safety of public utility employees. The Commission shall cooperate with and coordinate its activities for public utilities with similar programs of the Department of Motor Vehicles, the Insurance Department, the Industrial Commission and other organizations engaged in the promotion of highway safety and employee safety. (1899, c. 164, s. 24; Rev., s. 1065; C. S., s. 1061; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.** — (a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:

(1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or
(2) That persons are not served who may reasonably be served, or
(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made, or
(4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or
(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

the Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected within a reasonable time prescribed in the order. This section shall not apply to terminal or terminal facilities of motor carriers of property.

(b) If such order is directed to two or more public utilities, the utilities so designated shall be given such reasonable time as the Commission may grant within which to agree upon the portion or division of the cost of such additions, extensions, repairs, improvements or changes which each shall bear. If at the expiration of the time limited in the order of the Commission, the utility or utilities named in the order shall fail to file with the Commission a statement that an agreement has been made for division or apportionment of the cost or expense, the Commission shall have the authority, after further hearing in the same proceeding, to make an order fixing the portion of such cost or expense to be borne by each public utility affected and the manner in which the same shall be paid or secured. (1933, c. 307, s. 10; 1949, c. 1029, s. 2; 1963, c. 1165, s. 1.)

Protest Is Not Notice.—A protest filed by a city in a proceeding by a power company for an increased cash fare on its city busses was not sufficient to constitute such notice as is required by this section so as to authorize the Commission to consider whether or not the service rendered by the power company was adequate or inadequate. State v. Greensboro, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

§ **62-43. Fixing standards, classifications, etc.; testing service.**—(a) The Commission may, after notice and hearing, had upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed or followed by any or all public utilities; ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any and all public utilities; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any public utility.

(b) The Commission shall fix, establish and promulgate standards of quality and safety for gas furnished by a public utility and prescribe rules and regulations for the enforcement of and obedience to the same. (1919, c. 32; C. S., s. 1055; 1933, c. 134, s. 8; c. 307, s. 11; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-44. Commission may require continuous telephone lines.**—The Commission may, upon its own motion or upon written complaint by any person, after notice and hearing, require any two or more telephone or telegraph utilities to establish and maintain through lines within the State between two or more localities, which cannot be communicated with or reached by the lines of either utility alone, where the lines or wires of such utilities form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of equipment, or the transfer of messages at common points. The rate for such service shall be just and reasonable and the Commission shall have power to establish the same, and declare the portion thereof to which each utility affected thereby is entitled and the manner in which the same must be secured and paid. All necessary construction, maintenance and equipment in order to establish such service shall be constructed and maintained in such manner and under such rules, with such divisions of expense and labor, as may be required by the Commission. (1933, c. 307, s. 9; 1963, c. 1165, s. 1.)

§ **62-45. Determination of cost and value of utility property.**—The Commission, after notice and hearing, may ascertain and fix the cost or value, or both, of the whole or any part of the property of any public utility insofar as the same is material to the exercise of the jurisdiction of the Commission, make revaluations from time to time, and ascertain the cost of all new construction, extensions and additions to the property of every public utility. (1933, c. 307, s. 12; 1963, c. 1165, s. 1.)

§ **62-46. Water gauging stations.**—The Commission may require the location, establishment, maintenance and operation of any water gauging station which it finds is needed in the State over and above those required by federal agencies, and the Commission may cooperate with federal and other State agencies as to the location, construction and reports and the results of operation of such station. (1933, c. 307, s. 33; 1963, c. 1165, s. 1.)

§ **62-47. Reports from municipalities operating own utilities.**—Every municipality furnishing gas, electricity or telephone service shall make an annual report to the Commission, verified by the oath of the general manager or superintendent thereof, on the same forms as provided for reports of public utilities, giving the same information as required of public utilities. (1933, c. 307, s. 34; 1963, c. 1165, s. 1.)

Cross Reference.—As to admissibility of records in utility rate hearing, see § 62-65.

§ **62-48. Appearance before courts and agencies.**—The Commission is authorized and empowered to initiate or appear in such proceedings before federal and State courts and agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service. (1899, c. 164, s. 14; Rev., s. 1110; 1907, c. 469, s. 5; C. S., s. 1075; 1929, c. 235; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-49. Publication of utilities laws.**—The Commission is authorized and directed to secure biennial publication of all North Carolina laws affecting public utilities, together with the Commission Rules and Regulations, in an annotated edition for economical, convenient distribution to the public generally at the minimum cost available. (1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

§§ **62-50 to 62-59:** Omitted.

ARTICLE 4.

Procedure Before the Commission.

§ **62-60. Commission acting in judicial capacity; administering oaths and hearing evidence; decisions; quorum.**—For the purpose of conducting hearings, making decisions and issuing orders, and in formal investigations where a record is made of testimony under oath, the Commission shall be deemed to exercise functions judicial in nature and shall have all the powers and jurisdiction of a court of general jurisdiction as to all subjects over which the Commission has or may hereafter be given jurisdiction by law. The commissioners and members of the Commission's staff designated and assigned as examiners shall have full power to administer oaths and to hear and take evidence. The Commission shall render its decisions upon questions of law and of fact in the same manner as a court of record. A majority of the commissioners shall constitute a quorum, and any order or decision of a majority of the commissioners shall constitute the order or decision of the Commission, except as otherwise provided in this chapter. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Commission Is an Administrative Agency. — The Utilities Commission, a creature of the General Assembly, is an administrative agency of the State, with such powers and duties as are given it by this chapter. These powers and duties are of a dual nature—supervisory or regulatory, and judicial. State v. Atlantic Greyhound Corp., 224 N. C. 293, 29 S. E. (2d) 909 (1944); Utilities Comm. v. Atlantic Greyhound Corp., 224 N. C. 672, 32 S. E. (2d) 23 (1944).

With Powers of Court of General Jurisdiction as to Certain Matters.—See State v. Atlantic Greyhound Corp., 224 N. C. 293, 29 S. E. (2d) 909 (1944); Utilities Comm.

v. Atlantic Greyhound Corp., 224 N. C. 672, 32 S. E. (2d) 23 (1944).

Ordinarily, the procedure before the Commission is more or less informal, and is not as strict as in superior court, nor is it confined by technical rules. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Liberality and informality is essential to the workings of the Commission. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Great liberality is indulged in pleadings in proceedings before the Commission, and the technical and strict rules of pleading applicable in ordinary court proceedings do not apply. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Substance and not form is controlling. State v. Carolinas Committee for Industrial Power Rates, etc., 257, N. C. 560, 126 S. E. (2d) 325 (1962).

The Commission may enlarge or restrict the inquiry before it unless a party is clearly prejudiced thereby. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Res Judicata.—Only specific questions actually heard and finally determined by the Commission in its judicial character are res judicata, and then only as to the parties to the hearing. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Deferring Use of Increased Rates Pending Investigation.—After rates for certain intrastate shipments had been duly established by the Utilities Commission, defendant sought to increase such rates by filing tariff schedules to that effect. The Commission, in a proceeding to which defendant was a party, by order of postponement, which was not objected to, deferred use of the new increased rates pending investigation, and also directed that the rates previously fixed should not be changed by subsequent tariffs or schedules until this investigation and suspension proceeding had been disposed of, continuing the investigation from time to time at the request of defendant. It was held that such action of the Commission was binding on defendant. However, defendant should be given a reasonable time to comply with the order before penalties might be invoked. State v. Atlantic Coast Line R. Co., 224 N C. 283, 29 S. E. (2d) 912 (1944).

Commission Is Without Inherent Powers of Appellate Court.—The North Carolina Utilities Commission is a court of general jurisdiction only as to subjects embraced within this chapter. It is a court of original jurisdiction and does not possess the inherent powers of an appellate court. State v. Norfolk Southern Ry. Co., 224 N. C. 762, 32 S. E. (2d) 346 (1944).

Former Statute.—For cases construing § 1023 of the Consolidated Statutes, containing similar provisions, see Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897); State v. Southern R. Co., 151 N. C. 447, 66 S. E. 427 (1909); North Carolina Corp. Comm. v. Winston-Salem, etc., R. Co., 170 N. C. 560, 87 S. E. 785 (1917); State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923).

§ 62-61. Witnesses; production of papers; contempt.—The Commission shall have the same power to compel the attendance of witnesses, require the examination of persons and parties, and compel the production of books and papers, and punish for contempt, as by law is conferred upon the superior courts. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Cross References.—As to attendance of witnesses, see §§ 8-59 to 8-64. As to contempt, see § 5-1 et seq.

§ 62-62. Issuance and service of subpoenas.—All subpoenas for witnesses to appear before the Commission, a division of the Commission or a hearing commissioner or examiner and notice to persons or corporations, shall be issued by the Commission or its chief clerk or a deputy clerk and be directed to any sheriff, constable or other officer authorized by law to serve process issued out of the superior courts, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. The Commission shall have the authority to require the applicant for a subpoena for persons and documents to make a reasonable showing that the evidence of such persons or documents will be material and relevant to the issue in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ **62-63. Service of process and notices.**—The chief clerk, a deputy clerk, or any authorized agent of the Commission may serve any notice issued by it and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and all officers authorized by law to serve process issuing out of the superior courts, to serve any process, subpoenas and notices issued by the Commission, and such officers shall be entitled to the same fees as are prescribed by law for serving similar papers issuing from the superior court. Service of notice of all hearings, investigations and proceedings by the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions governing civil actions in the superior courts of this State, and may be made personally by an authorized agent of the Commission or by mailing in a sealed envelope, registered, with postage prepaid, or by certified mail. (1949, c. 989, s. 1; 1957, c. 1152, s. 2; 1963, c. 1165, s. 1.)

Cross References.—As to fees of officers, see § 162-6. As to penalty upon sheriff for failing to execute and return process, see § 162-14.

§ **62-64. Bonds.**—All bonds or undertakings required to be given by any of the provisions of this chapter shall be payable to the State of North Carolina, and may be sued on as are other undertakings which are payable to the State. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ **62-65. Rules of evidence; judicial notice.**—(a) When acting as a court of record, the Commission shall apply the rules of evidence applicable in civil actions in the superior court, insofar as practicable, but no decision or order of the Commission shall be made or entered in any such proceeding unless the same is supported by competent material and substantial evidence upon consideration of the whole record. Oral evidence shall be taken on oath or affirmation. The rules of privilege shall be effective to the same extent that they are now or hereafter recognized in civil actions in the superior court. The Commission may exclude incompetent, irrelevant, immaterial and unduly repetitious or cumulative evidence. All evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be made a part of the record in the case by definite reference thereto at the hearing. Any party introducing any document or record in evidence by reference shall bear the expense of all copies required for the record in the event of an appeal from the Commission's order. Every party to a proceeding shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness regardless of which party first called such witness to testify and to rebut the evidence against him. If a party does not testify in his own behalf, he may be called and examined as if under cross-examination.

(b) The Commission may take judicial notice of its decisions, the annual reports of public utilities on file with the Commission, published reports of federal regulatory agencies, the decisions of State and federal courts, State and federal statutes, public information and data published by official State and federal agencies and reputable financial reporting services, generally recognized technical and scientific facts within the Commission's specialized knowledge, and such other facts and evidence as may be judicially noticed by Justices of the Supreme Court and judges of the superior courts. When any Commission decision relies upon such judicial notice of material facts not appearing in evidence, it shall be so stated with particularity in such decision and any party shall, upon petition filed within ten (10) days after service of the decision, be afforded an opportunity to contest the purported facts noticed or show to the contrary in a rehearing set with proper notice to all parties; but the Commission may notify the parties before or during the hearing of facts judicially noticed, and afford at the hearing a reasonable opportunity to contest the purported facts noticed, or show to the contrary. (1949, c. 989, s. 1; 1959, c. 639, s. 2; 1963, c. 1165, s. 1.)

Cross Reference.—As to rules of evidence generally, see § 8-1 et seq.

Admissibility of Annual Reports of Municipalities.—In a proceeding by a utility for an increase in rates, wherein municipalities engaged in resale of electrical energy purchased from the utility protested against the proposed schedules of the utility, copies of annual reports of the municipality to the Commission pursuant to statute, which showed profits made by the municipalities from resale of electrical energy, were admissible in evidence on the question of whether the proposed schedules were fair and equitable as between groups or classifications to be served under such schedules. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Admissibility of Evidence of Rates Charged by Another Utility.—In a proceeding by a utility for a rate increase the Commission properly excluded evidence of rates charged by another utility in the same area as that involved in the proceeding in the absence of evidence as to the relative cost conditions of the two utilities. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Burden of Proof.—In the hearing before the Utilities Commission, the burden was on the applicant to offer competent, material and substantial evidence in support of his application for modification of his existing franchise. Utilities Comm. v. Great Southern Trucking Co., 223 N. C. 687, 28 S. E. (2d) 201 (1943); State v. Ray, 236 N. C. 692, 73 S. E. (2d) 870 (1953).

§ **62-66. Depositions.** — The Commission or any party to a proceeding may take and use depositions of witnesses in the same manner as provided by law for the taking and use of depositions in civil actions in the superior court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ **62-67. Examination before hearing.**—Any party to a proceeding may make application to the Commission for examination of any other party before hearing. The Commission, if it finds good cause therefor, shall issue the order for such examination, and the deposition taken thereunder shall be filed with the Commission's chief clerk, in accordance with and subject to the procedure prescribed for such examinations in the superior court. In cases in which the Commission is a party, it may order such examination upon its own motion, upon the affidavit of any member of the Commission's staff. The Commission may adopt rules for the taking of such examinations. (1963, c. 1165, s. 1.)

§ **62-68. Use of affidavits.**—At any time, ten or more days prior to a hearing or a continued hearing, any party or the Commission may send by registered or certified mail or deliver to the opposing parties a copy of any affidavit proposed to be used in evidence, together with the notice as herein provided. Unless an opposing party or the Commission at least five (5) days prior to the hearing, if the affidavit and notice are received at least twenty (20) days prior to such hearing, otherwise at any time prior to or during such hearing, sends by registered or certified mail or delivers to the proponent a request to cross-examine the affiant at the hearing, the right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant at the hearing is not afforded after request therefor is made as herein provided, the affidavit shall not be received in evidence. The notice accompanying the affidavit shall set forth the name and address of the affiant and shall contain a statement that the affiant will not be called to testify orally and will not be subject to cross-examination unless the opposing parties or the Commission demand the right of cross-examination by notice mailed or delivered to the proponent at least five (5) days prior to the hearing if the notice and affidavit are received at least twenty (20) days prior to such hearing, otherwise at any time prior to or during such hearing. (1949, c. 989, s. 1; 1957, c. 1152, s. 3; 1963, c. 1165, s. 1.)

§ **62-69. Stipulations and agreements; pre-hearing conference.**—(a) In all contested proceedings the Commission, by pre-hearing conferences and in such other manner as it may deem expedient and in the public interest, shall encourage the parties and their counsel to make and enter stipulations of record for the following purposes:

(1) Eliminating the necessity of proof of all facts which may be admitted and the authenticity of documentary evidence,

(2) Facilitating the use of exhibits, and

(3) Clarifying the issues of fact and law.

The Commission may make informal disposition of any contested proceeding by stipulation, agreed settlement, consent order or default.

(b) Unless otherwise provided in the Commission's rules of practice and procedure, such pre-hearing conferences may be ordered by the Commission or requested by any party to a proceeding in substantially the same manner, and with substantially the same subsequent procedure, as provided by law for the conduct of pre-trial hearings in the superior court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-70. Ex parte communications.—(a) In all matters and proceedings on the Commission's formal docket with adversary parties of record, all communications or contacts of any nature between any party and the Commission or any of its members or any hearing examiner assigned to such docket, whether verbal or written, formal or informal, which pertain to the merits of such matter or proceeding, shall be made only with full knowledge of or notice to all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto.

(b) In the event any such communication or contact shall be received by the Commission or any commissioner or any hearing examiner assigned to such docket without such knowledge or notice to all other parties, the Commission shall immediately cause a formal record of such violation to be made in its docket and thereafter no ruling or decision shall be made in favor of such violating party until the aggrieved party shall waive such violation or the Commission shall find as a fact that such party was not prejudiced thereby or that any such prejudice, if present, has been removed.

(c) Any contacts or communications made in violation of this section which are not recorded by the Commission may be recorded by notice to the Commission by any aggrieved party and, unless the Commission shall find that such violation did not in fact occur, such recording shall have the same effect as if done by the Commission.

(d) In matters not under this section, the Commission may secure information and receive communications ex parte, it being the purpose of this section to protect adversary interests where they exist but not otherwise to restrict unduly the administrative and legislative functions of the Commission.

(e) This section shall not modify any notice required in the case of pleadings and proceedings which are subject to other requirements of notice to parties of record, whether by statute or by rule of the Commission, and the Commission may adopt reasonable rules to coordinate this section with such other requirements.

(f) In addition to the foregoing provisions regarding contacts with members of the Commission and hearing examiners, if any party of record, including the assistant attorney general when he is a party, confers with or otherwise contacts any staff personnel employed by the Commission regarding the merits of a pending proceeding, the staff employee shall promptly forward by regular mail a memorandum of the date and general subject matter of such contact to all other parties of record to the proceeding. (1963, c. 1165, s. 1.)

§ 62-71. Hearings to be public; record of proceedings.—(a) All formal hearings before the Commission, a hearing division, a commissioner or an examiner shall be public, and shall be conducted in accordance with such rules as the Commission may prescribe. A full and complete record shall be kept of all proceedings on any formal hearing, and all testimony shall be taken by a reporter appointed by the Commission. Any party to a proceeding shall be entitled to a copy of the record or any part thereof upon the payment of the reasonable cost thereof as determined by the Commission.

(b) The Commission in its discretion may approve stenographic or mechanical methods of recording testimony, or a combination of such methods, and a transcript of any such record shall be valid for all purposes, subject to protest and settlement by the Commission.

(c) The Commission is authorized to provide daily transcripts of testimony in cases of substantial public interest and in other cases where time is an important factor to the parties involved. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Formal Hearing.—An informal conference between members of the Commission and representatives of the utility involved in a rate proceeding, which was called at the suggestion of the Commission, and which involved only a single question as to whether the protesting municipalities having industrial users could secure an industrial rate, and at which conference no testimony and no record was taken, was not a formal hearing within the meaning of this section. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 62-72. Commission may make rules of practice and procedure.—Except as otherwise provided in this chapter, the Commission is authorized to make and promulgate rules of practice and procedure for the Commission hearings. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

In the absence of statutory inhibition, the Commission may regulate its own procedure within broad limits, and may prescribe and adopt reasonable rules and regulations with respect thereto, provided such rules are consistent with the statutes governing its actions. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Rules Must Not Be Contrary to Statutes.—While the power of the legislature to delegate authority to an administrative agency of the State to prescribe rules and regulations for the due and orderly performance of its public functions is unquestioned, this does not authorize the formulation of rules contrary to the statute. State v Atlantic Coast Line R. Co., 224 N. C. 283, 29 S. E. (2d) 912 (1944).

Waiver or Suspension of Rules.—The Commission may adopt its own rules governing pleadings, and has the power to waive or suspend the rules. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Challenging Validity of Rules by Appeal under Former Law.—See State v. Atlantic Greyhound Corp., 224 N. C. 293, 29 S. E. (2d) 909 (1944); Utilities Comm. v. Atlantic Greyhound Corp., 224 N. C. 672, 32 S. E. (2d) 23 (1944).

§ 62-73. Complaints against public utilities.—Complaints may be made by the Commission on its own motion or by any person having an interest, either direct or as a representative of any persons having a direct interest in the subject matter of such complaint by petition or complaint in writing setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation or rate heretofore established or fixed by or for any public utility in violation of any provision of law or of any order or rule of the Commission, or that any rate, service, classification, rule, regulation or practice is unjust and unreasonable. Upon good cause shown and in compliance with the rules of the Commission, the Commission shall also allow any such person authorized to file a complaint, to intervene in any pending proceeding. The Commission, by rule, may prescribe the form of complaints filed under this section, and may in its discretion order two or more complaints dealing with the same subject matter to be joined in one hearing. Unless the Commisson shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint, the Commission shall fix a time and place for hearing, after reasonable notice to the complainant and the utility complained of, which notice shall be not less than ten (10) days before the time set for such hearing. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-74. Complaints by public utilities.—Any public utility shall have the right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint and notice of hearing shall be served by the Commission upon such interested persons as it may designate. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-75. Burden of proof.—In all proceedings instituted by the Commission for the purpose of investigating any rate, service, classification, rule, regulation or practice, the burden of proof shall be upon the public utility whose rate, service, classification, rule, regulation or practice is under investigation to show that the same is just and reasonable. In all other proceedings the burden of proof shall be upon the complainant. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Legality of Rule Placing Burden Upon All Carriers as to All Rates.—This section uses the word "carrier" or "utility" in the singular. Therefore, when the Commission initiates an investigation of the entire rate structure of motor carriers, and places upon the carriers the burden of showing that the old rates, which have been in effect for a number of years with the approval of the Commission, are just and reasonable, a question arises as to whether the Commission has exceeded its legislative authority. See State v. North Carolina Motor Carriers Ass'n, 253 N. C. 432, 117 S. E. (2d) 271 (1960).

Burden of Proof as to Counterclaim.—Where the challenge to the rate of return arose from protestants' counterclaim, the protestants were therefore complainants, and the burden was upon them. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

§ 62-76. Hearings by Commission, hearing division of Commission, commissioner, or examiner.—(a) Except as otherwise provided in this chapter, any matter requiring a hearing shall be heard and decided by the Commission or shall be referred to a division of the Commission or one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this article, a hearing division, hearng commissioner or examiner to whom a hearing has been referred by order of the chairman shall have all the rights, duties, powers and jurisdiction conferred by this chapter upon the Commission. The chairman, in his discretion, may direct any hearing by the Commission or any division, commissioner or examiner to be held in such place or places within the State as he may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission.

(b) In all cases where a division of the Commission hears a proceeding and as many as three commissioners hearing the case approve the recommended order, such order shall thereby become and shall be issued as a final order of the Commission. If less than three commissioners approve such order, it shall be a recommended order only, subject to review by the full Commission, with all commissioners eligible to participate in the final arguments and decision.

(c) In all cases in which a pending proceeding shall be assigned to a hearing commissioner, such commissioner shall hear and determine the proceedings and submit his recommended order, but, in the event of a petition to the full Commission to review such recommended order, the hearing commissioner shall take no part in such review, either in hearing oral argument or in consideration of the Commission's decision, but his vote shall be counted in such decision to affirm his original order. (1949, c. 989, s. 1; 1959, c. 639, s. 3; 1963, c. 1165, s. 1.)

§ 62-77. Recommended decision of hearing division, commissioner or examiner.—Any report, order or decision made or recommended by a hearing division, commissioner or examiner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law and shall be filed with the Commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-78. Proposed findings, briefs, exceptions, orders, expediting gases, and other procedure. — (a) Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a hearing division, commissioner or examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission, for the consideration of the Commission, division, commissioner or examiner, as the case may be, proposed findings of fact and conclusions of law and briefs.

(b) Within the time prescribed by the hearing division, commissioner, or examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order and a brief in support thereof, provided the time so fixed shall be not less than fifteen (15) days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception.

(c) In all proceedings in which a hearing division, commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed, the Commission, before making its final decision or order, shall afford the party or parties an opportunity for oral argument. When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission; provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(d) When exceptions are filed, as herein provided, it shall be the duty of the Commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary or proper to carry out the purposes of this chapter. The Commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order or decision thereon.

(e) The Commission may expedite the hearing and decision of any case if the public interest so requires by the use of pre-trial conferences, daily transcripts of evidence, trial briefs, and prompt oral argument, and by granting priority to the hearing and decision of such case. (1949, c. 989, s. 1; 1959, c. 639, s. 4; 1963, c. 1165, s. 1.)

Ordinarily, the procedure before the Commission is more or less informal and is not as strict as in superior court, nor is it confined by technical rules; substance and not form is controlling. State v. Champion Papers, Inc., 259 N. C. 449, 130 S. E. (2d) 890 (1963).

This section requires the Commission to find all facts essential to a determination of the question at issue. Having found the facts, it may then make factual conclusions. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

The reason for compelling adequate factual findings is to permit proper judicial review. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

The duty imposed is similar to that duty imposed on a judge of the superior court by § 1-185 when a jury trial is waived, and on the Industrial Commission by § 97-84 before it can award or deny compensation. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

Failure to Make Findings Necessitates Remand.—A failure by the Commission to find facts essential to a determination of the rights of the parties necessitates a remand to the Commission to make necessary findings on which it may base its order. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

Applied in State v. Carolina Power & Light Co., 250 N. C. 421, 109 S. E. (2d) 253 (1959).

§ 62-79. Final orders and decisions; findings; service; compliance.—(a) All final orders and decisions of the Commission shall be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and shall include:

(1) Findings and conclusions and the reasons or bases therefor upon all the material issues of fact, law, or discretion presented in the record, and

(2) The appropriate rule, order, sanction, relief or statement of denial thereof.

(b) A copy of every final order or decision under the seal of the Commission shall be served by registered or certified mail upon the person against whom it runs or his attorney and notice thereof shall be given to the other parties to the proceeding or their attorney. Such order shall take effect and become operative when issued unless otherwise designated therein and shall continue in force either for a period which may be designated therein or until changed or revoked by the Commission; provided, upon filing of new, changed or additional rates, it shall not be necessary to obtain relief from an outstanding order of the Commission fixing rates except in the case of transportation rates where the rates have been in effect less than one (1) year. If an order cannot, in the judgment of the Commission, be complied with within the time designated therein, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. (1949, c. 989, s. 1; 1957, c. 1152, s. 4; 1959, c. 639, s. 4; 1961, c. 472, s. 1; 1963, c. 1165, s. 1.)

§ 62-80. Powers of Commission to rescind, alter or amend prior order or decision.—The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

"Complaint Proceeding." — A hearing pursuant to the provisions of this section and § 62-136 which involves a single rate or small part of a rate structure of a public utility is called a "complaint proceeding." It differs from a general rate case in that it deals with an emergency or change of circumstances which does not affect the entire rate structure of a utility and may be resolved without involving the procedure outlined in § 62-133. State v. Carolina Power and Light Co., 250 N. C. 421, 109 S. E. (2d) 253 (1959).

The Commission may not arbitrarily or capriciously rescind its order approving a contract between utilities. It must appear that such rescission is made because of a change of circumstances requiring it in the public interest. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

In the absence of statutory authority, and in the absence of any additional evidence or a change in conditions the Commission has no power to reopen a proceeding and modify or set aside an order theretofore made by it where the order was made in pursuance of an agreement entered into by the parties to the proceeding. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Circumstances Justifying Rescission of Prior Order Approving Contract. — The improvement and construction of highways between two municipalities making feasible a new and quicker bus route between them was sufficient change of condition to empower the Utilities Commission to modify or rescind a prior order entered by it approving an agreement between two carriers in regard to their respective services to the public between the two municipalities along the older routes. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Revocation of Prior Order Reversed.—An order of the Utilities Commission revoking its prior order approving an agreement between carriers in regard to their respective services along the route in question and substituting in lieu thereof an order of the Commission having the same effect as the agreement, was reversed, there being no evidence to support the Commission's conclusion that the new order would promote harmony among the carriers, and there being no showing of a change of condition requiring a revision of the prior order in the public interest. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

§ 62-81. Special procedure in hearing and deciding rate cases.—All proceedings for an increase in rates and all other rate proceedings declared to be general rate cases under § 62-137 shall be set for hearing within six (6) months of the institution or filing thereof, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions. Such cases shall be heard by the full Commission, and the Commission shall furnish a transcript of the evidence and testimony presented by the end of the second business day after the taking of each day of testimony. The Commission shall require that briefs and oral arguments in such cases be submitted within thirty (30) days after receipt of such transcripts, and the Commission shall render its decision in such cases within sixty (60) days after submission of such briefs and arguments. All public utilities filing or applying for an increase in rates for electric, telephone, natural gas or water service shall notify their consumers of such filing by regular mail or by newspaper publication within thirty (30) days thereafter, which notice shall state that any hearing on said filing shall be set within six (6) months of said filing date. Other public utilities shall give such notice in a manner to be prescribed by the Commission. (1963, c. 1165, s. 1.)

§§ 62-82 to 62-89: Omitted.

ARTICLE 5.

Review and Enforcement of Orders.

§ 62-90. Right of appeal; filing of exceptions.—(a) No party to a proceeding before the Commission may appeal from any final order or decision of the Commission unless within thirty (30) days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, by order made within thirty (30) days, the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

(b) The Commission shall within thirty (30) days after the filing of notice of appeal and exceptions to the final order or within thirty (30) days after any order which may be issued finally determining the exceptions to the final order, whichever is later, transmit the entire record in the proceeding, or a copy thereof, certified under the seal of the Commission, to the Supreme Court in all rate increase cases covered by § 62-99, and in all other cases, to the superior court of the county agreed upon by the parties, or in the absence of such agreement, to the superior court of any county in which the business involved in the proceeding is conducted, or is proposed to be conducted, or in which the remedy or relief sought is to be applied or enforced, together with the notice of appeal; provided, however, the Commission may, on motion of any party to the proceeding or on its own motion, set the exceptions to the final order upon which such appeal is based for further hearing before the Commission.

(c) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

(d) Except in direct appeals under § 62-99, the judge holding the court for the county to which the record is sent or the resident judge of the judicial district embracing said county shall hear and determine all matters arising on such appeal, as in this article provided, and may, in the exercise of discretion, remove the case to any other county. After final determination of the appeal, the clerk of the superior court shall return to the Commission such records as were transmitted by it to such court, together with a certified copy of the decision of the court. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1; 1963, c. 1165, s. 1.)

I. General Consideration.
II. Cases Decided Prior to 1949 Revision of Procedural Sections.

Cross Reference.

As to appeal directly to Supreme Court from order approving or authorizing rate increase, see § 62-99.

I. GENERAL CONSIDERATION.

Necessity for Filing Exceptions; Appeal Limited to Parties.—An affected party must file exceptions to the determination or decision within ten (now thirty) days after notice of the determination or decision. And on appeal from the Utilities Commission is limited to parties to the proceeding, and a party is not affected by a ruling of the Utilities Commission unless the decision affects or purports to affect some right or interest of a party to the controversy and is in some way determinative of some material question involved. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1961).

Jurisdiction of Commission to Reopen Case and Make Changes in Record. — Within the time limited for transmitting the record to the superior court the Utilities Commission, notwithstanding the filing of notice of appeal, has jurisdiction and authority to reopen the case, to hear further evidence, and to make such changes in the original record as the Commission concludes the facts and the law warrant in order that the record may speak the truth. State v. Champion Papers, Inc., 259 N. C. 449, 130 S. E. (2d) 890 (1963).

II. CASES DECIDED PRIOR TO 1949 REVISION OF PROCEDURAL SECTIONS.

Editor's Note.—All of the cases in the following note were decided before the 1949 revision of the statute relating to procedure before the Utilities Commission and appeals therefrom, and construe former §§ 62-19 and 62-20, to which this section corresponds.

Powers and Jurisdiction of Commission.—Under this chapter as it stood prior to the revision of 1949, it was held that, for the purpose of making investigations and conducting hearings, the legislature had constituted the North Carolina Utilities Commission a court of record, with all the powers and jurisdiction of a court of general jurisdiction as to all subjects embraced within the purview of the statute, for which procedure was prescribed and authorized, with the right in "any party affected thereby" to appeal "from all decisions or determinations made by the Utilities Commission." State v. Atlantic Greyhound Corp., 224 N. C. 293, 29 S. E. (2d) 909 (1944); Utilities Comm. v. Atlantic Greyhound Corp., 224 N. C. 672, 32 S. E. (2d) 23 (1944). See § 62-60.

Orders of Commission Need No Confirmation.—The Utilities Commission is a State administrative agency of original and final jurisdiction, and its orders require no confirmation by any court to be effective. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Rehearing upon Exceptions.—Under this chapter as it stood prior to the 1949 revision, it was held that the Utilities Commission was not authorized to grant rehearings except in the manner prescribed by former § 62-20, to which this section corresponds. State v. Norfolk Southern Ry. Co., 224 N. C. 762, 32 S. E. (2d) 346 (1944).

Appeal to Superior Court.—Under former § 62-20 appeal from the Commission must be to the superior court. Pate v. Wilmington, etc., R. Co., 122 N. C. 877, 29 S. E. 334 (1898).

Jurisdiction of Superior Court — Dismissal.—The jurisdiction of the superior court with respect to the trial of law and fact on appeal under former § 62-20 was derivative and not original, and therefore if the Commission was without jurisdiction of the proceeding in which the order was made, from which the appeal was taken, because of the absence of a necessary party, or upon any other ground, the superior court was likewise without jurisdiction, and the proceeding pending therein, upon appeal, should be dismissed by said court. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Independent Action to Restrain Exercise of Rights Granted by Commission.—Plaintiffs instituted action against a competing carrier to restrain it from exercising rights given it by orders of the Utilities Commission amending its franchise. The orders were entered in proceedings to which plaintiffs were parties. It was held that plaintiffs had adequate remedy for the protection of their rights by appeal under former §§ 62-19 and 62-20, and judgment sustaining defendant's demurrer in the independent action was proper. Atlantic Greyhound Corp. v. North Carolina Utilities Comm., 229 N. C. 31, 47 S. E. (2d) 473 (1948).

Right of Appeal Confined to Parties.—Former § 62-20 distinctly confined the right of appeal to a party to the proceeding. North Carolina Corp. Comm. v. Winston-Salem, etc., R. Co., 170 N. C. 560, 87 S. E. 785 (1916).

The right of appeal conferred by former § 62-20 was limited to a party to the proceeding. For purposes of appeal, those who had no property or proprietary rights which were or might be affected by orders of the Commission were not such parties. An appeal by persons who were not parties to the proceeding would be dismissed by the superior court, for the reason that said court acquired no jurisdiction by such appeal. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928); State v. Kinston, 221 N. C. 359, 20 S. E. (2d) 322 (1942).

"Any Party Affected".—Under the provisions of former § 62-20, "any party affected" by the order of the Commission as to rates or charges for passengers by a street railway company, etc., was given the right of appeal to the court from such order. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919).

The former statute, providing that "from all decisions or determinations made by the Corporation [now Utilities] Commission any party affected thereby shall be entitled to an appeal," must necessarily mean from a decision which affects or purports to affect some right or interest of a party to the controversy and is in some way determinative of some material question involved. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908).

It is the duty of a municipality granting a charter to a corporation to operate a streetcar system therein which, by contract, has limited the fares to be charged passengers within a certain amount, to represent the public in proceedings upon a petition filed by the railway company before the Commission requesting that it be permitted to raise the fares beyond those limited in the contract, and thus the municipality might appeal through the courts as former § 62-20 prescribed, when the order was adverse to it or the interest it represented, as a "party affected by the decision and determination of the Commission," expressly provided for by the statute. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919).

Who Were Not Parties under Former § 62-20.—Citizens seeking to have a railway station moved could not appeal from the Commission's decision, under former § 62-20, because they were not parties. North Carolina Corp. Comm. v. Winston-Salem, etc., R. Co., 170 N. C. 560, 87 S. E. 785 (1916).

Notice Mandatory.—Under former § 62-20, it was held that the statutory notice of an appeal by a railroad company from an order of the Commission was mandatory, and could not be extended by the consent of the parties of record. State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923); State v. Norfolk Southern Ry. Co., 224 N. C. 762, 32 S. E. (2d) 346 (1944).

Notice to Complaining Party under Former § 62-20.—When notice of appeal to the superior court was given to the Commission by a railroad company, and other requirements of former § 62-20 relating thereto were met by the company, it was sufficient without giving notice of the appeal to the complaining party in the proceedings had before the Commission, as upon this appeal the statute made the Commission the party plaintiff. North Carolina Corp. Comm. v. Southern R. Co., 151 N. C. 447, 66 S. E. 427 (1909)

Removal to Federal Courts.—Assuming that an order of the Commission made to compel a carrier to change the location and conditions of its depot to promote the convenience, security and accommodation of the public would be an invasion of interstate commerce, this does not transform the proceedings in which the order is made into "a suit at law or in equity," as such removable from the superior court of the State to an inferior federal tribunal, upon the ground of diverse citizenship. North Carolina Corp. Comm. v. Southern R. Co., 151 N. C. 447, 66 S. E. 427 (1909).

In proceedings for the removal of a cause from the State to the federal courts upon the question of diversity of citizenship under the federal statute applicable, the State court is not bound to surrender its jurisdiction until a case has been made which, on the face of the petition, shows the petitioner has a right to the transfer of the cause to the federal courts. North Carolina Corp. Comm. v. Southern R. Co., 151 N. C. 447, 66 S. E. 427 (1909).

Final Process.—Under this article as it stood before the 1949 revision, it was held that the Commission had no power to enforce its orders and decrees by final process issuing directly therefrom, and for such purpose resort must be had to ordinary courts, either by independent proceedings or in proper instances by process issued in cases carried before such courts on appeal. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908). See §§ 62-97, 62-98.

Removal of Franchise Restriction as to Carriage of Passengers by Motor Carrier.—Former § 62-20 authorized a petitioner to appeal to the superior court from an adverse ruling of the Utilities Commission on its petition for the removal from its franchise of a restriction in regard to the carriage of passengers, and the contention that no appeal would lie from such order because the right of appeal was governed by the motor carrier laws authorizing an appeal from an order affecting franchise only when entered for violation of law, was untenable. Utilities Comm. v. Carolina Scenic Coach Co., 216 N. C. 325, 4 S. E. (2d) 897 (1939).

Petitioner had the right to appeal to the superior court from the denial of its petition for the removal from its franchise of a restriction prohibiting it from transporting passengers between two cities along its route in purely local traffic between the said cities. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

§ 62-91. Appeal docketed; priority of trial.—The cause shall be entitled "State of North Carolina on relation of the Utilities Commission against (here insert name of appellant)." It shall be on the civil issue docket of such court and shall have priority over other civil actions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Utilities Commission as Party.—When the Utilities Commission sits as a court of record to determine the rights of rival claimants to a valuable franchise, it is somewhat anomalous to find it appearing in the Supreme Court to uphold its order from which one or the other party had appealed. However, this procedure seems to have been authorized by the General Assembly. State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951).

§ 62-92. Parties on appeal.—In any appeal to the superior court, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to the proceeding before the Commission shall have a right to appear and participate in said appeal. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Former Law.—Under this chapter as it stood before the 1949 revision of the procedural sections, in case of an appeal to the courts, the only authorized parties were the State of North Carolina on relation of the Commission as plaintiff and the railroad or other corporation as defendant. No one else could appeal, because there were, and under the statute could be, no other parties, and the right to appeal was confined to the parties to the proceeding. North Carolina Corp. Comm. v. Winston-Salem, etc., R. Co., 170 N. C. 560, 87 S. E. 785 (1916).

The Utilities Commission is a party of record in a proceeding before it, and upon appeal the Commission becomes the party plaintiff. State v. Norfolk Southern Ry. Co., 224 N. C. 762, 32 S. E. (2d) 346 (1944).

§ **62-93. No evidence admitted on appeal; remission for further evidence.**—No evidence shall be received at the hearing on appeal but if any party shall satisfy the court that evidence has been discovered since the hearing before the Commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Commission with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Commission may deem proper, from which order an appeal shall lie as in the case of any other final order from which an appeal may be taken as provided in § 62-90. (1949, c. 989, s. 1; 1955, c. 1207, s. 2; 1963, c. 1165, s. 1.)

Cross Reference.—See note to § 62-94.

Record Must Show Basis for Remand.—Where nothing in the record indicates that any party made a motion to remand or that any party desired to offer further evidence, or that newly discovered evidence was available, there is no basis for the court, in its discretion, to remand the cause. State v. Maybelle Transport Co., 252 N. C. 776, 114 S. E. (2d) 768 (1960).

§ **62-94. Record on appeal; extent of review.** — (a) On appeal the court shall review the proceedings without a jury in chambers or at term time and such review shall be confined to the record as certified by the Commission to the court, except that in cases of alleged irregularities in procedure before the Commission, not shown in the record, testimony thereon may be taken in the court.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional provisions, or
(2) In excess of statutory authority or jurisdiction of the Commission, or
(3) Made upon unlawful proceedings, or
(4) Affected by other errors of law, or
(5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted, or
(6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfuly or unreasonably delayed.

(e) Upon any appeal, the rates fixed, or any rule, regulation, finding, determination, or order made by the Commission under the provisions of this chapter shall be prima facie just and reasonable. If on any appeal the court determines that an issue is presented which, for constitutional reasons, must be submitted to a jury, the court shall order a jury trial as to such issue. (1949, c. 989, s. 1; 1955, c. 1207, s. 3; 1963, c. 1165, s. 1.)

I. General Consideration.
II. Cases Decided Prior to 1949 Revision of Procedural Sections.

I. GENERAL CONSIDERATION.

Appeals from the Utilities Commission are confined to questions of law upon

grounds specifically set forth in appellant's petition for rehearing by the Commission. State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951). See State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953).

Weighing of Evidence and Exercise of Judgment Thereon Are Matters for Commission.—The decisions of the Utilities Commission must be within the authority conferred by statute, yet the weighing of the evidence and the exercise of judgment thereon as to transportation problems within the scope of its powers are matters for the Commission. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

And Court May Not Find Facts or Regulate Utilities.—Although in reviewing an order of the Commission, a court might, upon the same facts, have reached a different result, it is not for the court to find the facts or to regulate utilities. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

What constitutes public convenience and necessity is primarily an administrative question with a number of imponderables to be taken into consideration, e. g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Determination by Commission Is Prima Facie Just and Reasonable.—A determination by the Commission is made by statute, not simply prima facie evidence of its validity, but prima facie just and reasonable. State v. Ray, 236 N. C. 692, 73 S. E. (2d) 870 (1953); State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955); State v. Casey, 245 N. C. 297, 96 S. E. (2d) 8 (1957); State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

An order of the Commission requiring a transportation company to maintain public service facilities must be considered prima facie reasonable and just, but this does not preclude the transportation company affected from showing that the order was unsupported by competent, material and substantial evidence. State v. Atlantic Coast Line R. Co., 238 N. C. 701, 78 S. E. (2d) 780 (1953).

By this section an order of the Commission is prima facie just and reasonable. This applies to orders approving contracts of public utilities. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

And Burden Is on Appellant to Show Error of Law in Proceedings.—The law imposes the duty upon the Utilities Commission and not the courts to fix rates, and the burden is upon appellant from an order of the Commission to show error of law in the proceeding before the Commission. State v. Champion Papers, Inc., 259 N. C. 449, 130 S. E. (2d) 890 (1963).

But Appellant May Show That Order Was Unsupported by Evidence.—Upon appeal the orders made by the Utilities Commission "shall be prima facie just and reasonable," but this does not preclude the appellant from showing that the evidence offered rebuts the prima facie effect of the order, and that the order was unsupported by competent, material and substantial evidence in view of the entire record. State v. Atlantic Coast Line R. Co., 235 N. C. 273, 69 S. E. (2d) 502 (1952); State v. Gulf-Atlantic Towing Corp., 251 N. C. 105, 110 S. E. (2d) 886 (1959).

While the determination of a petition by a carrier to be allowed to discontinue an established service rests in large measure in the sound judgment and discretion of the Utilities Commission, and its order in regard thereto is prima facie just and reasonable, such order is reviewable to ascertain whether it is arbitrary or capricious or if the essential findings of fact on which it is based are supported by competent, material and substantial evidence. State v. Southern Ry. Co., 254 N. C. 73, 118 S. E. (2d) 21 (1961).

Additional Findings of Fact by Superior Court Not Authorized.—When an appeal to the superior court is taken from an order entered by the North Carolina Utilities Commission, the review is limited to the record as certified and to the questions of law presented therein. There is no provision for additional findings of fact by the judge for the purpose of determining the validity of the order entered by the Commission. State v. Fox, 236 N. C. 553, 73 S. E. (2d) 464 (1952); State v. Ray, 236 N. C. 692, 73 S. E. (2d) 870 (1953). See State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953).

And where the trial judge made findings of fact and upon the findings so made rendered judgment that the order of the Commission was null and void, the Supreme Court will remand the case to the superior court for judgment on the questions of law presented by the record as certified, or for remand to the Utilities

Commission for additional findings if any may be deemed necessary. State v. Fox, 236 N. C. 553, 73 S. E. (2d) 464 (1952).

Commission's Findings Are Conclusive if Supported by Evidence.—On the appeal to the superior court the Commission's findings of fact are conclusive and binding if they are supported by competent, material, and substantial evidence in view of the entire record. State v. Champion Papers, Inc., 259 N. C. 449, 130 S. E. (2d) 890 (1963).

Evidence of Reasonableness of Practice.—Where the Commission's order required the defendants to do no more than they did voluntarily and without objection for thirty years or more, preceding the last six or eight years this would seem to be "strong evidence" of the reasonableness of the practice. Utilities Comm. v. Southern Ry. Co., 256 N. C. 359, 124 S. E. (2d) 510 (1962).

When Order Granting Rate Increase Affirmed.—Where the order of the Utilities Commission granting petitioner an increase in rates in a general rate case is justified by the findings of fact which are supported by plenary evidence, the order of the Commission will be affirmed. State v. Tidewater Natural Gas Co., 259 N. C. 558, 131 S. E. (2d) 303 (1963).

Issues Not Raised before Commission.—Appellant may not rely on new grounds for relief on appeal when such grounds were not set forth specifically in his petition for rehearing before the Commission. State v. State, 250 N. C. 410, 109 S. E. (2d) 368 (1959).

Contents of Order Remanding Cause.—If a cause is remanded under this section, the order should specify the ground on which it is based and thereby indicate to the Commission the nature of its further proceedings. State v. Maybelle Transport Co., 252 N. C. 776, 114 S. E. (2d) 768 (1960).

Applied in State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

II. CASES DECIDED PRIOR TO 1949 REVISION OF PROCEDURAL SECTIONS.

Editor's Note.—All of the cases in the following note were decided before the 1949 revision of the procedural provisions of this chapter, and construe former §§ 62-20 and 62-21, corresponding to § 62-90 and this section. It should be noted that the 1949 revision made many changes in procedure, and especially in the extent of review.

Prior to the 1949 revision, on appeal to the superior court the trial was under the same rules and regulations applicable in other civil causes, save and except the prima facie effect to be given the decision or determination of the Commission. State v. Great Southern Trucking Co., 223 N. C. 687, 28 S. E. (2d) 201 (1943).

Appeal under Former Law Was Trial de Novo.—Upon appeal under the former statute by a party to a proceeding before the Corporation [now Utilities] Commission from an order made therein under former §§ 62-42 and 62-43, the superior court had jurisdiction to try and determine both issues of law and issues of fact, duly presented by assignments of error based upon exceptions duly taken by the appellant during the hearing before the Commission. The trial of such issues by the superior court was de novo. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928), citing S. v. R. R., 161 N. C. 270, 76 S. E. 554 (1912).

Under this chapter as it stood before the 1949 revision, the trial was de novo, and from thence only would a further appeal lie to the Supreme Court, governed by the rule that such an appeal must not be fragmentary, but shall be from a final judgment or one final in its nature. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

A provision of former § 62-21 that on appeal the trial should be "under the same rules and regulations as are prescribed for the trial of other civil causes," was interpreted to mean that the trial should be de novo. State v. Great Southern Trucking Co., 223 N. C. 687, 28 S. F. (2d) 201 (1943), citing North Carolina Corp. Comm. v. Winston-Salem Southbound R. Co., 170 N. C. 560, 87 S. E. 785 (1916).

Appeals from the Utilities Commissioner were analogous to appeals from a justice of the peace rather than appeals from a referee, and since the trial in the superior court was de novo upon issues of fact raised by the exceptions, the superior court properly refused to pass upon appellant's exceptions to the findings of fact seriatim. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Decision of Commission Was "Prima Facie Just and Reasonable."—While on appeal from the Utilities Commission to the superior court the provision of former § 62-21 was interpreted to mean that the trial should be de novo, the section also provided that the decision or determination of the Commission "shall be prima facie just and reasonable." State v. Great Southern Trucking Co., 223 N. C. 687, 28 S. E. (2d) 201 (1943).

Findings of Fact Not Conclusive.—Former §§ 62-20 and 62-21 did not contain any provision that the findings of fact by the Utilities Commission should be conclusive on appeal. State v. Willis Barber, etc., Shop, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Presumptions.—The provision of the former statute that the decision of the Utilities Commissioner should be deemed prima facie just and reasonable, merely raised a presumption of law, and placed the burden of going forward with the proof upon the party appealing from the decision, but even if the section had been construed to raise a presumption of fact, an instruction that the findings and decision of the Commissioner were prima facie just and reasonable gave appellee the benefit of a presumption of fact when the evidence fully apprised the jury of the substance and purport of the order. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Issues of Fact.—While on appeal under the former law from the denial of a petition to remove certain restrictions from petitioner's franchise, the point at issue was the reasonableness of the Commissioner's order, which was a question of law, nevertheless the reasonableness of the order depended upon the attendant facts, and exceptions to the Commissioner's findings upon which his order was predicated, raised issues of fact for the determination of the jury. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Petitioner filed a petition requesting the removal from its franchise of a restriction prohibiting it from transporting passengers between two cities along its route in purely local traffic between the said cities. The Utilities Commissioner denied the petition upon his findings, among others, that the service between the two cities furnished by another carrier was ample, that there was no necessity for permitting petitioner to furnish service between the two cities, and that the removal of the restriction was not demanded by the public interest. Upon appeal, under the former law, it was held that the exceptions raised issues of fact to be determined by a jury, a high degree of formality in separating findings and conclusions of fact from conclusions of law not being required, and the appeal was properly transferred to the civil issue docket and tried before a jury. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Question for Decision on Appeal.—Petitioner filed a petition requesting the removal from its franchise of a restriction prohibiting it from transporting passengers between two cities along its route in purely local traffic between said cities. Upon appeal to the superior court under the former law from the denial of the petition, the carrier intervening and opposing the granting of the petition objected to the refusal of the court to submit an issue as to whether the public interest demanded additional transportation facilities between the two cities and objected to the submission of the issue as to whether the public convenience and necessity required the removal of the restriction from the petitioner's franchise, contending that the sole question within the superior court's jurisdiction was whether the public convenience and necessity required additional service, and that upon an affirmative finding to this issue in the superior court the matter should be remanded to the Commissioner in order that he might select the person or corporation to which he would award the franchise for such additional service. It was held that the question for the decision in the superior court upon appeal was whether petitioner should be given the relief prayed, and not whether the Commissioner should be sustained in his ruling, and the superior court had jurisdiction to determine the matter and grant the relief prayed for upon an affirmative finding by the jury upon the issue submitted. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

Evidence.—On appeal from an order of the Commission, under former § 62-21 the trial was de novo tried under the same rules and regulations as are prescribed for the trial of other civil causes; and any relevant evidence could be there introduced, whether it had theretofore been introduced before the Commission or not. State v. Seaboard Air Line, etc., R. Co., 161 N. C. 270, 76 S. E. 554 (1912). See § 62-26.9.

In case wherein a union passenger depot had been ordered by the Commission it was reversible error in the superior court, on appeal from the Commission, for the trial judge to admit evidence as to the effect the relocation would have on property values in a near-by town, where the present station of one of the roads is located. State v. Seaboard Air Line, etc., R. Co., 161 N. C. 270, 76 S. E. 554 (1912).

Affirmance of Decision of Commission.—Under former § 62-21, in the absence of a showing that the decision of the Utilities Commission was clearly unreasonable and unjust, appellee, on appeal to the superior court, was entitled to an affirmance of the decision of the Commission. State v. Carolina Coach Co., 224 N. C. 390, 30 S. E. (2d) 328 (1944).

In an application for a certificate of public convenience and necessity the Utilities Commission must act within the authority conferred by the statute, yet the findings from the evidence and the exercise of judgment thereon within the scope of its powers are matters for the Commission, and its order will not be disturbed when sustained by the findings upon competent, material and substanial evidence. State v. Fredrickson Motor Exp., 232 N. C. 180, 59 S. E. (2d) 582 (1950).

§ 62-95. Relief pending review on appeal.—Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the judge of the superior court is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-96. Appeal to Supreme Court.—In all appeals heard first in the superior court, any party may appeal to the Supreme Court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that the Commission, if it shall appeal, shall not be required to give any undertaking or make any deposit to assure the cost of such appeal, and such court may advance the cause on its docket. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Cross References.—As to appeal generally, see § 1-268 et seq. As to Commission appearing before Supreme Court to uphold its own order, se note to § 62-91.

An appeal does not lie directly from the Commission to the Supreme Court. North Carolina Corp. Comm. v. Winston-Salem, etc., R. Co., 170 N. C. 560, 568, 87 S. E. 785 (1916), citing Pate v. Wilmington, etc., R. Co., 122 N. C. 877, 29 S. E. 334 (1898).

§ 62-97. Judgment on appeal enforced by mandamus.—In all cases in which, upon appeal, an order or decision of the Commission is affirmed, in whole or in part, the appellate court shall include in its decree a mandamus to the appropriate party to put said order in force, or so much thereof as shall be affirmed, or the appellate court may make such other order as it deems appropriate. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Performance Compelled by Mandamus.—Under former § 62-25, corresponding to this section prior to the 1949 revision of the procedural sections of this article, it was said that the State court could compel performance only by resort to the high prerogative writ of mandamus, and that by authority of the statute. North Carolina Corp. Comm. v. Southern R. Co., 151 N. C. 447, 66 S. E. 427 (1909).

Under former § 62-25, the right to a mandamus to enforce a valid order was given in causes which had been carried to the superior court by appeal. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908).

§ 62-98. Peremptory mandamus to enforce order, when no appeal.—(a) If no appeal is taken from an order or decision of the Commission within the time prescribed by law and the person to which the order or decision is directed fails to put the same in operation, as therein required, the Commission may apply to the judge regularly assigned to the superior court district which includes Wake County, or to the resident judge of said district at chambers, or to the judge holding the superior court in any judicial district in which the business is conducted upon ten days' notice, for a peremptory mandamus upon said person for the putting in force of said order or decision; and if said judge shall find that the order of said Commission was valid and within the scope of its powers, he shall issue such peremptory mandamus.

(b) An appeal shall lie to the Supreme Court in behalf of the Commission, or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Commission is in addition to other remedies prescribed by law. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

Orders of Commission Are Not Judgments.—The Commission makes such orders as the circumstances of the case justify, but these orders are not judgments of a court. The Commission cannot issue execution to enforce them; they simply serve as the basis for judicial action in the superior court to enforce them or to punish their violation. 2 N. C. Law Rev. 74. See Mayo v. Western Union Tel. Co., 112 N. C. 343, 16 S. E. 1006 (1893).

Independent Proceedings for Mandamus.—An appeal may be had by independent proceedings for mandamus to enforce a valid order from which no appeal has been taken. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908).

Mandamus to Enforce Final Order.—Where the Commission had ordered two railroad companies to erect a union depot at a junction after a hearing upon the petition of the citizens of the town, and the railroads had lost or waived their statutory right to appeal, such order was regarded as a final judgment, and mandamus proceedings to compel the enforcement of the final order upon failure of the railroads to except and appeal therefrom was the remedy authorized by statute. State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923).

§ **62-99. Rate increases appealed direct from Commission to Supreme Court.**—Appeals from an order or decision of the Commission approving or authorizing an increase in the rates or charges of a public utility shall be made directly from the Commission to the Supreme Court without intermediate review in the superior court. The Commission shall transmit the entire record in all such appeals direct to the Supreme Court for hearing and review in accordance with the extent of review set out in this article for review of Commission cases, and the rules and regulations as are prescribed by law for appeals. (1963, c. 1165, s. 1.)

§§ **62-100 to 62-109:** Omitted.

ARTICLE 6.

The Utility Franchise.

§ **62-110. Certificate of convenience and necessity.**—No public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to necessity for certificate of convenience and necessity for housing projects, see § 157-28.

Editor's Note.—See article in 16 N. C. Law Rev. 46.

This section does not apply to municipal corporations. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

A municipal corporation in the operation of a municipally owned electric power plant with transmission lines extended to supply consumers beyond its corporate limits is not required under this section to obtain from the Utilities Commission a certificate of public convenience and necessity before it can lawfully operate. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

This section is not applicable to an electric membership corporation organized under the provisions of §§ 117-6 to 117-27.

And by reason of the provisions of § 117-27 there was no error in holding that the defendant electric membership corporation was not required to obtain from the Utilities Commissioner (now Utilities Commission) of North Carolina a certificate of public convenience and necessity. Carolina Power, etc., Co. v. Johnston County Elec. Membership Corp., 211 N. C. 717, 192 S. E. 105 (1937); Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co., 255 N. C. 258, 120 S. E. (2d) 749 (1961).

§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.—(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

(b) No certificates or permits issued under the provisions of this chapter for motor carriers of passengers shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any motor carrier of passengers be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listing securities on recognized markets. The applicant shall give not less than ten days' written notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this chapter, the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier of passengers party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in § 62-262 upon an application for an original certificate or permit. In all cases arising under this subsection it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under this section such other conditions as the Commission may determine are necessary to effectuate the purposes of this article.

(c) No sale of a franchise for a motor carrier of property shall be approved by the Commission until the seller shall have filed with the Commission a statement under oath of all debts and claims against the seller, of which such seller has any knowledge or notice, (i) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (ii) for wages due employees of the seller, other than salaries of officers and in the case of motor carriers, (iii) for unremitted c.o.d. collections due shippers, (iv) for loss of or damage to goods transported, or received for transportation, (v) for overcharges on property transported, and, (vi) for interline accounts due other carriers, together with a bond, if required by the Commission, payable to the State, executed by a surety company authorized to do business in the State, in an amount double the aggregate of all such debts and claims conditioned upon the payment of the same within the amount of such bond as the amounts and validity of such debts and claims are established by agreement of the parties, or by judgment. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy under court order.

(d) No person shall obtain a franchise for the purpose of transferring the same to another, and an offer of such transfer within one (1) year after the same was obtained shall be prima facie evidence that such certificate or permit was obtained for the purpose of sale. (1947, c. 1008, s. 22; 1949, c. 1132, s. 20; 1953, c. 1140, s. 3; 1957, c. 1152, s. 10; 1961, c. 472, ss. 6, 7; 1963, c. 1165, s. 1.)

Certificate Holder Not Released from Liability for Nonperformance of Duties.—This section does not confer upon the Utilities Commission the power to release the holder of a certificate of convenience and necessity from liability for the nonperformance of public duties incident to the certificate. And the Commission possesses no such power in the absence of a delegation thereof by the legislature. Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

A lease of intrastate motor vehicle common-carrier operating rights, approved by the Utilities Commission, does not release lessor, the holder of the certificate of convenience and necessity, from liability for nonperformance of franchise duties or torts incident to operation, and a shipper may hold lessor liable for lessee's failure to make prompt remittance of C. O. D. collections as required by § 62-273. In the instant case the Utilities Commission, in approving the lease, did not attempt to relieve lessors of such obligations, nor would it have the power to do so. Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

Transferee Must Render Services Called for.—The approval by the Commission of the transfer of a carrier's certificate of authority implies the duty on the part of the transferee to render the service called for in the certificate, which it must perform in a substantial manner. State v. Colter, 259 N. C. 269, 130 S. E. (2d) 385 (1963).

Combining Purchased Route Authority and Original Route Authority of Purchasing Carrier.—Where an irregular carrier acquires the certificate of another irregular carrier with the authority of the Utilities Commission, the purchasing carrier has the legal right to combine or "tack" the irregular route authority purchased by it and its original irregular route authority, there being no conditions or restrictions imposed by statute or any rule or regulation of the Commission in effect at the time of the purchase. State v. Forbes Transfer Co., Inc., 259 N. C. 688, 131 S. E. (2d) 452 (1963).

§ 62-112. Effective date, suspension or revocation of franchises.—(a) Franchises shall be effective from the date issued unless otherwise specified therein, and shall remain in effect until terminated under the terms thereof, or until suspended or revoked as herein provided.

(b) Any franchise may be suspended or revoked, in whole or in part, in the discretion of the Commission, upon application of the holder thereof; or, after notice and hearing, may be suspended or revoked, in whole or in part, upon complaint, or upon the Commission's own initiative, for wilful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition or limitation of such franchise; provided, however, that any such franchise may be suspended by the Commission upon notice to the holder or lessee thereof without a hearing for any one or more of the following causes:

(1) For failure to provide and keep in force at all times security, bond, insurance or self-insurance for the protection of the public as required in § 62-268 of this chapter.

(2) For failure to file and keep on file with the Commission applicable tariffs or schedules of rates as required in this chapter.

(3) For failure to pay any gross receipts, use or privilege taxes due the State of North Carolina within thirty (30) days after demand in writing from the agency of the State authorized by law to collect the

same; provided, that this subdivision shall not apply to instances in which there is a bona fide controversy as to tax liability.

(4) For failure for a period of sixty (60) days after execution to pay any final judgment rendered by a court of competent jurisdiction against any holder or lessee of a franchise for any debt or claim specified in § 62-111 (b) and (c).

(5) For failure to begin operations as authorized by the Commission within the time specified by order of the Commission, or for suspension of authorized operations for a period of thirty (30) days without the written consent of the Commission, save in the case of involuntary failure or suspension brought about by compulsion upon the franchise holder or lessee. (1947, c. 1008, s. 23; 1949, c. 1132, s. 21; 1963, c. 1165, s. 1.)

§ **62-113. Terms and conditions of franchises.**—Each franchise shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, a motor carrier or other public utility is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the privileges granted by the franchise such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of a carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of a carrier or other public utility, the requirements established by the Commission under this chapter; provided, however, that no terms, conditions, or limitations shall restrict the right of a motor carrier of property only to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the franchises, as the development of the business and the demands of the public shall require. (1947, c. 1008, s. 12; 1949, c. 1132, s. 11; 1963, c. 1165, s. 1.)

The Commission need not approve or reject an application as submitted. It may attach to the certificate granted such reasonable terms, conditions and limitations as the public convenience and necessity may require. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Obligations Inherent in Acceptance of Certificate.—Inherent in the acceptance of a certificate and the exercise of the rights and privileges evidenced thereby, is the correlative obligation to serve the shipping public faithfully in accordance with reasonable rules and regulations prescribed by the Utilities Commission and in conformity with the requirements of provisions of the statute prescribing duties to be performed by the carrier for the protection of the shipping public. Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ **62-114. Contract carriers; issuance of permits; terms and conditions.**—When the Commission issues a permit to any contract carrier, it shall specify in the permit, or amendment thereto, the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under § 62-261, provided, that no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, as the development of the business and the demands of the public may require. (1947, c. 1008, s. 13; 1949, c. 1132, s. 12; 1963, c. 1165, s. 1.)

§ **62-115. Issuance of partnership franchises.**—No franchise shall be issued under this article to two or more persons until such persons have executed a partnership agreement, filed a copy of said agreement with the Commission, and indicated to the Commission, in writing, that they have complied with article 14 of chapter 66 relating to doing business under an assumed name. (1947, c. 1008, s. 14; 1949, c. 1132, s. 14; 1961, c. 472, s. 5; 1963, c. 1165, s. 1.)

§ 62-116. Issuance of temporary authority.—Upon the filing of an application in good faith for a franchise, the Commission may in its discretion, after notice by regular mail to all persons holding franchises authorizing similar services within the same territory and upon a finding that no other adequate existing service is available, pending its final decision on the application, issue to the applicant appropriate temporary authority to operate under such just and reasonable conditions and limitations as the Commission deems necessary or desirable to impose in the public interest; provided, however, that pending such final decision on the application, the applicant shall comply with all the provisions of this chapter, and with the lawful orders, rules and regulations of the Commission promulgated thereunder, applicable to holders of franchises, and upon failure of an applicant so to do, after reasonable notice from the Commission requiring compliance therewith in the particulars set out in the notice, and after hearing, the application may be dismissed by the Commission without further proceedings, and temporary authority issued to such applicant may be revoked. The authority granted under this section shall not create any presumption nor be considered in the action on the permanent authority application. (1947, c. 1008, s. 10; 1949, c. 1132, s. 9; 1963, c. 1165, s. 1.)

§ 62-117. Same or similar names prohibited.—No public utility holding or operating under a franchise issued under this chapter shall adopt or use a name used by any other public utility, or any name so similar to a name of another public utility as to mislead or confuse the public, and the Commission may, upon complaint, or upon its own initiative, in any such case require the public utility to discontinue the use of such name, preference being given to the public utility first adopting and using such name. (1947, c. 1008, s. 15; 1949, c. 1132, s. 15; 1963, c. 1165, s. 1.)

§ 62-118. Abandonment and reduction of service.—Upon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition, notice and hearing, to authorize by order any public utility to abandon or reduce such service. Provided, however, that abandonment or reduction of service of motor carriers shall not be subject to this section, but shall be authorized only under the provisions of § 62-262(k). (1933, c. 307, s. 32; 1963, c. 1165, s. 1.)

Utility Owes Duty of Continuous Operation.—While a public utility retains its franchise, it owes to the state and the public the duty of continuous operation. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

Power of Commission to Authorize Discontinuance Discretionary. — The power conferred upon the Utilities Commission to authorize a discontinuance of an established service indicates that the General Assembly intended that the Commission exercise this power in large measure according to its judgment and discretion. State v. Southern Ry. Co., 254 N. C. 73, 118 S. E. (2d) 21 (1961).

Order Must Be Obtained.—Where a power company discontinued its service for nonpayment of charges, the customer, upon payment of the charges, is entitled to restoration of the service where the company did not obtain an order from the Commission. Sweetheart Lake v. Carolina Power, etc., Co., 211 N. C. 269, 189 S. E. 785 (1937).

What Utility Must Show.—When a public utility seeks to abandon service it must establish that the public no longer needs the service which it was created to render or that there is no reasonable probability of its being able to realize sufficient revenue by the rendition of such service to meet its expenses. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

The doctrine of convenience and neces-

sity is a relative or elastic theory rather than an abstract or absolute rule. The facts in each case must be separately considered and from those facts it must be determined whether or not public convenience and necessity require a given service to be performed or dispensed with. The convenience and necessity required are those of the public and not of an individual or individuals. State v. Southern Ry. Co., 254 N. C. 73, 118 S. E. (2d) 21 (1961).

As to power of Commission under former § 62-39 to require transportation and transmission companies to maintain facilities, see State v. Atlantic Coast Line R. Co., 233 N. C. 365, 64 S. E. (2d) 272 (1951); State v. Atlantic Coast Line R. Co., 235 N. C. 273, 69 S. E. (2d) 502 (1952); State v. Atlantic Coast Line R. Co., 238 N. C. 701, 78 S. E. (2d) 780 (1953).

§§ 62-119 to 62-129: Omitted.

ARTICLE 7.

Rates of Public Utilities.

§ 62-130. Commission to make rates for public utilities. — (a) The Commission shall make, fix, establish or allow just and reasonable rates for all public utilities subject to its jurisdiction. A rate is made, fixed, established or allowed when it becomes effective pursuant to the provisions of this chapter.

(b) The Commission may make or approve in its discretion special passenger or excursion rates.

(c) The Commission may make, require or approve, after public hearing, for intrastate shipments what are known as milling-in-transit, processing-in-transit, or warehousing-in-transit rates on grain, lumber to be dressed, cotton, peanuts, tobacco, or such other commodities as the Commission may designate.

(d) The Commission shall from time to time as often as circumstances may require, change and revise or cause to be changed or revised any rates fixed by the Commission, or allowed to be charged by any public utility. (1899, c. 164, ss. 2, 7, 14; 1903, c. 683; Rev., ss. 1096, 1099, 1106; 1907, c. 469, s. 4; Ex. Sess. 1908, c. 144, s. 1; 1913, c. 127, s. 2; 1917, c. 194; C. S., ss. 1066, 1071, 3489; Ex. Sess. 1920, c. 51, s. 1; 1925, c. 37; 1929, cc. 82, 91; 1933, c. 134, s. 8; 1941, c. 97; 1953, c. 170; 1963, c. 1165, s. 1.)

Cross Reference.—As to the regulation of rates for ferries connecting links of the State highway system, see §§ 136-84 and 136-85.

Editor's Note.—See 12 N. C. Law Rev. 289, for article on "Electric Rates."

Article Not in Conflict with Chapter 75.—The provisions of this article as to rate regulation are not in conflict with chapter 75, Monopolies and Trusts. Bennett v. Southern Ry. Co., 211 N. C. 474, 191 S. E. 240 (1937).

Police Power of State.—The authority, conferred upon the Commission to establish reasonable and just rates of charges by a public service corporation for furnishing to its customers electrical power, comes within the police powers of the State, and contracts previously made are subordinate to the public interest that such rates be reasonable and just, and afford the corporation supplying the service a safe return upon its investments, having proper regard to the public interest that plants of this character should be properly run and maintained. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

Supervisory Power of Commission.—The Commission is given general supervision over railways, street railways, and the like companies of the State, and empowered to fix such notes, charges and tariffs as may be reasonable and just, having in view the value of the property, the cost of improvements and maintenance, the probable earning capacity under the proposed rates, the sums required to meet operating expenses, and other specific matters pertinent to such an inquiry, and these are police powers delegated to this Commission, governmental so far as they extend. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919).

General Rate Fixing Power.—The Commission is given broad and general powers to make rates for freight and passenger service. Tilley v. Norfolk, etc., R. Co., 162 N. C. 37, 77 S. E. 994 (1913).

Duty to Fix Rates.—When the Commission is called upon, by either a corporation or those to whom the services are rendered, under its franchise to exercise its rate fixing power and authority, it is its duty to fix and establish just and reasonable rates to be charged for such services. Corporation Comm. v. Henderson Water Co., 190 N. C. 70, 128 S. E. 465 (1925).

Power to Ascertain Corporation in Control.—The Commission has the incidental power (subject to the right of appeal) to ascertain what particular corporation is in the control of or operates any telegraph line in this State, in order that it may exercise its authority to fix rates, as well as to know against whom to proceed for a violation of its regulations. State v. Western Union Tel. Co., 113 N. C. 213, 18 S. E. 389 (1893).

Classification Must Not Be Arbitrary.—In Gulf, etc., R. Co. v. Ellis, 165 U. S. 150, 17 S. Ct. 255, 41 L. Ed. 666 (1897), it was said: "The mere fact of classification in rate regulating is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear, not merely that a classification has been made, but also that it is based upon some reasonable ground—something which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection." Efland v. Southern R. Co., 146 N. C. 135, 140, 59 S. E. 355 (1907).

Effect of Private Agreements. — The rates of transportation allowed carriers of freight are established by the Interstate Commerce Commission. and the State Corporation Commission (now the Utilities Commission), which may not be affected by any agreement to the contrary between the carriers or their agents or employees and the shipper; and, notwithstanding such agreement, the carrier may demand and enforce the rates established by law. Southern R. Co. v. Latham, 176 N. C. 417, 97 S. E. 234 (1918).

A public service railway corporation operating in various localities may not by contract fix its passenger fares and thus prevent the Commission, under the authority conferred by statute, from determining what rates are, under the circumstances, just and reasonable, for such would authorize such companies to discriminate, unlawfully, among its patrons. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919); Winston-Salem v. Winston-Salem City Coach Lines, Inc., 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Discrimination Remedied by Mandamus.—Where a public service corporation has discriminated among its patrons in its charges for electricity, mandamus will lie to compel it to charge a uniform or undiscriminating rate, for the question does not require the courts to fix a rate, or pass upon its reasonableness. North Carolina Public Service Co. v. Southern Power Co., 179 N. C. 18, 101 S. E. 593 (1919).

Fees and Charges Made by Municipality.—The Utilities Commission has no jurisdiction to fix or supervise the fees and charges to be made by a municipality for connections with a city sewerage system, either within or without its corporate limits. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

City Bus Fares.—The Commission has authority to fix city bus fares. State v. Greensboro, 244 N. C. 247, 93 S. E. (2d) 151 (1956). See § 62-260 and annotation thereto.

An intracity carrier, holding a certificate of exemption issued by the Commission and a franchise from the city or town in which it operates, is exempt from control of the Commission except as to rates and controversies with respect to extensions and services. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

When Fares of Street Railway May Be Raised.—A public service street railway company, operating under a city charter, and under a contract with the city restricting the passenger fare authorized to be charged its patrons, may be authorized by the Commission to raise its charges to its passengers, when in the opinion of the Commission such is necessary for it to properly maintain its system, allowing a reasonable profit, to meet the requirements of the public for adequate, safe, and convenient service. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919).

Joint Rate between Lumber Railroad and Connecting Carrier.—When a lumber railroad is of standard gauge and of sufficient equipment and extensiveness to affect the interest of the public, the Commission may make a valid order establishing a joint rate of transportation in the same cars between it and a connecting common carrier by rail to points beyond the initial road. Corporation Comm. v. Atlantic Coast Line R. Co., 187 N. C. 424, 121 S. E. 767 (1924).

Electric Power Rates Coextensive with State's Jurisdiction.—When the Commission has finally established, under the provisions of the statute, rates to be charged by a public service corporation for furnishing electrical power, the rates are coextensive with the State's jurisdiction and territory, and conclusively bind all corporations, companies, or persons who are parties to the suit and have been afforded an opportunity to be heard. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

Sale of Electricity Generated in Another State.—While the generation of electricity in another state when transported to purchasers in this State may be regarded as interstate commerce, its distribution and sale here is local to the State, permitting the Commission to establish a just and reasonable rate of charge in conformity with the statutory powers, there being no interfering act of Congress relating to the subject. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

Telephone Company Must Not Discriminate.—In Clinton-Dunn Tel. Co. v. Carolina Tel. Co., 159 N. C. 9, 74 S. E. 636 (1912), it was held that a telephone company is subject to public regulation and reasonable control, and is required to afford its service at uniform and reasonable rates and without discrimination among its subscribers and patrons for like service under the same or substantially similar conditions. See Godwin v. Telephone Co., 136 N. C. 258, 48 S. E. 636 (1904); Walls v. Strickland, 174 N. C. 298, 93 S. E. 857 (1917).

When Telegram Transmitted over Lines of Another Company.—Where a telegraph company has a continuous line between two points in this State, the fact that, in transmitting a message, it sent the message over the lines of another company does not excuse its violation of the rate prescribed by the Railroad Commission (now Utilities Commission) for the transmission of a message sent over the lines of one company. Leavell v. Western Union Tel. Co., 116 N. C. 211, 21 S. E. 391 (1895).

Telegraphic Messages Traversing Another State.—Telegraphic messages transmitted by the company from and to points in this State, although traversing another state in the route, are subject to the tariff regulations of the Railroad [now Utilities] Commission. State v. Western Union Tel. Co., 113 N. C. 213, 18 S. E. 389 (1893).

§ 62-131. Rates must be just and reasonable; service efficient.—(a) Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.

(b) Every public utility shall furnish adequate, efficient and reasonable service. (1933, c. 307, ss. 2, 3; 1963, c. 1165, s. 1.)

§ 62-132. Rates established under this chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates. — The rates established under this chapter by the Commission shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable. Provided, however, that upon petition filed by any interested person, and a hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, nondiscriminatory and nonpreferential, to the extent that such rates or charges were collected within two (2) years prior to the filing of such petition. (1913, c. 127, s. 3; C. S., s. 1067; 1929, cc. 241, 342; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Rates Fixed by Commission Are Prima Facie Valid, Just and Reasonable.—The rates fixed by the Commission are not only prima facie evidence of their validity, but also prima facie evidence that they are just and reasonable. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Rates Other Than Those Fixed Deemed Unjust.—The rates approved by the Commission shall be deemed to be just and reasonable, and any different rate shall be deemed unjust and unreasonable. State v. Norfolk Southern Ry. Co., 249 N. C. 477, 106 S. E. (2d) 681 (1959).

Hence, in a proceeding to recover excessive freight charges collected because of an error in the tariff distance table filed with the Utilities Commission, the charges being in conformity with the tariff schedule for a greater distance than the correct distance between the termini, evidence offered by the carriers as to whether the higher rate was fair and reasonable for the shorter distance was properly excluded, since the carriers should not be permitted to change the rate by reason of a mistake in their tariff distance table, and petitioners were entitled to recover that part of the excess charged which was not barred by the limitation contained in the statute. State v. Norfolk Southern Ry. Co., 249 N. C. 477, 106 S. E. (2d) 681 (1959).

The Commission is authorized by statute to fix just and reasonable rates or charges, and when they are so fixed, other or lower rates are to be deemed as unjust and unreasonable. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

Rates Deemed Reasonable Until Modified.—Rates or charges fixed by an order of the Commission are to be considered just and reasonable unless and until they shall be changed or modified on appeal or by the further action of the Commission itself. In re Southern Pub. Utilities Co., 179 N. C. 151, 101 S. E. 619 (1919) approving State v. Seaboard Air Line Ry. Co., 173 N. C. 413, 92 S. E. 150 (1917).

Where Rates Re-established upon Reconsideration.—Where the Utilities Commission, after due notice and hearing, had established rates for intrastate shipments of pulpwood which it found to be just and reasonable, and thereafter upon petition of defendant and other carriers for reconsideration, the rate so established was ordered "to remain in full force and effect," it was held that these rates so established must be deemed the only just and reasonable rates for this commodity over defendant's lines, rendering it unlawful for defendant to charge a greater amount. State v. Atlantic Coast Line R. Co., 224 N. C. 283, 29 S. E. (2d) 912 (1944).

Burden of Proof.—One claiming that the rates or charges established by the Commission are unreasonable or excessive has the burden of proving his contention. Corporation Comm. v. Henderson Water Co., 190 N. C. 70, 128 S. E. 465 (1925); State v. Carolina Power & Light Co., 250 N. C. 421, 109 S. E. (2d) 253 (1959).

Applied in State v. State, 250 N. C. 410, 109 S. E. (2d) 368 (1959).

§ 62-133. How rates fixed. — (a) In fixing the rates for any public utility subject to the provisions of this chapter, other than motor carriers, the Commission shall fix such rates as shall be fair both to the public utility and to the consumer.

(b) In fixing such rates, the Commission shall:

(1) Ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State, considering the reasonable original cost of the property less that portion of the cost which has been consumed by previous use recovered by depreciation expense, the replacement cost of the property, and any other factors relevant to the present fair value of the property. Replacement cost may be determined by trending such reasonable depreciated cost to current cost levels, or by any other reasonable method.

(2) Estimate such public utility's revenue under the present and proposed rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the fair value of the property as will enable the public utility by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

(5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to paragraph (3) of this subsection the rate of return fixed pursuant to paragraph (4) on the fair value of the public utility's property ascertained pursuant to paragraph (1).

(c) The public utility's property and its fair value shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time.

(d) The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates.

(e) The fixing of a rate of return shall not bar the fixing of a different rate of return in a subsequent proceeding. (1899, c. 164, s. 2, subsec. 1; Rev., s. 1104; C. S., s. 1068; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Editor's Note.—See 12 N. C. Law Rev. 289.

As to a "just and reasonable" rate, see Smyth v. Ames, 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1897); State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Statute Is Constitutional.—The power to grant franchises to public service corporations and to fix their rates rests in the General Assembly, which power the General Assembly may delegate to an administrative agency provided the General Assembly prescribes rules and standards to guide such agency in the exercise of the delegated authority. The statute delegating to the Utilities Commission this authority is constitutional in fixing adequate rules and standards. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

And Controls Commission in Establishing Rates.—In establishing rates, the Commission is governed and controlled by the provision of this section. Southern R. Co. v. McNeill, 155 F. 756 (1907).

Section Applies to Fixing or Revising of Rate Schedules and Rate Classifications.—In fixing the rate schedules and rate classifications, or in revising said rates and classifications, or a substantial part thereof, the procedure indicated by this section must be observed. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

It May Not Apply Where Only One Rate or a Few Rates Are Involved.—This section may not apply where a public utility has many rate schedules applying to many different classes of service customers, and only one rate or a few rates are involved in a petition for amendment, modification or rescission. Ordinarily it is not required that the utility's property be valued and that the provisions of this section be observed in such case. State v. Carolina Power & Light Co., 250 N. C., 421, 109 S. E. (2d) 253 (1959).

Where a public utility has many rate schedules applying to many different classes of service customers and only one rate or a few rates are involved in a petition for amendment, modification or rescission, ordinarily it is not required that the utility's property be valued and that the provisions of this section be observed in such case. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

General Rate Case and Complaint Proceeding Distinguished.—Where the whole or a substantial portion of the rate structure of a public utility is being initially established or is under review, and where the required procedure under this section is being carried out, the hearing before the Commission to establish or revise the rates is referred to as a "general rate." State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

A hearing which involves a single rate or a small part of the rate structure is called a "complaint proceeding." It differs from a general rate case in that it deals with an emergency or change of circumstances which does not affect the entire rate structure and may be resolved without involving the procedure outlined in this section, and does not justify the expense and loss of time involved in such procedure. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Commission May Determine Nature of Proceeding.—It is within the province of the Commission to determine whether a hearing is a general rate case or a complaint proceeding. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

If by pleading excessive rate of return parties could bring this section into play and have a complete review of rate structure on every occasion that a matter relating to rates arises, the reasonable regulation of rates would be impossible. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

And Such Determination Must Be Made as to Every Hearing.—It is necessary as a matter of procedure that a determination as to whether a hearing is a general rate case or a complaint proceeding be made in every hearing involving the establishment, modification or revocation of rates. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Weight of Determination by Commission.—The findings of the Commission on whether a hearing is a general rate case or a complaint proceeding will not be disturbed in any case in the absence of a clear showing that the right of the parties have been prejudiced. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

A public utility corporation is entitled to a just and reasonable rate of return based upon the fair value of the properties used and useful in rendering the service for which the rate is established. State v. Greensboro, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

A rate must not only be fair, just and reasonable to the consumer, but fair, just and reasonable to the utility. State v. Carolinas Committee for Industrial Power Rates, etc., 257 N. C. 560, 126 S. E. (2d) 325 (1962).

Manner of Arriving at Rate.—The Commission, in fixing a reasonable and just rate of charges for public service corporations, may make a fair estimated value of the property presently used, and in relation thereto consider the tax valuation of the plant. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

What is a "just and reasonable" rate which will produce a fair return on the investment depends on (1) the value of the investment—usually referred to in rate-making cases as the rate base—which earns the return; (2) the gross income received by the applicant from its authorized operations; (3) the amount to be deducted for operating expenses, which must include the amount of capital investment currently consumed in rendering the service; and (4) what rate constitutes a just and reasonable rate of return on the predetermined rate base. In finding these essential, ultimate facts, the Commission must consider all the factors particularized in the statute and "all other facts that will enable it to determine what are reasonable and just rates, charges and tariffs." It must then arrive at its own independent conclusion, without reference to any specific formula, as to (1) what constitutes a fair value, for rate-making purposes, of applicant's investment used in rendering intrastate service—the rate base, and (2) what rate of return on the predetermined rate base will constitute a rate that is just and reasonable both to the applicant and to the public. While both original cost and replacement value are to be considered, neither constitutes a proper rate base. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954); State v. Carolina Power & Light Co., 250 N. C. 421, 109 S. E. (2d) 253 (1959); State v. Piedmont Natural Gas Co., 254 N. C. 536, 119 S. E. (2d) 469 (1961).

Capital Investment Determined as of Time Rates Are Effective.—Where a utility is currently investing large amounts of capital in expansion, the Utility Commission should determine the capital invested as of the time the rates fixed by it are to be effective, rather than the average net investment of the utility for the entire test year, since the rates fixed are prospective. State v. Piedmont Natural Gas Co., 254 N. C. 536, 119 S. E. (2d) 469 (1961).

Where a public utility uses for operating capital moneys collected by it in taxes for the federal government which it is not required to pay to the federal government until a later date, the Utilities Commission should take such capital into consideration in fixing rates, which action is neither a condemnation nor a condonement of the practice. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Income Produced by Increase of Facilities.—In fixing the rate for a telephone company, the Utilities Commission must take into consideration the net income to be produced by the increase in the number of telephones in service at the end of any test period adopted by the Commission. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Large Sum of Money on Hand for Working Capital.—When, in fixing rates which will produce a fair return on the investment of a utility, it is made to appear that it has on hand continuously a large sum of money it is using as working capital and to pay current bills for materials and supplies, that is a fact which must be taken into consideration. And if the fund on hand is sufficient, no additional sum should be allowed at the expense of the public. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Acceptance by Commission of "book value" or "cost less depreciation" as rate base is in conflict with the standard prescribed in the statute. The conclusion is inescapable that by accepting the book value as the rate base, it, ex necessitate, excluded consideration of present cost of replacement and all other factors from effective consideration. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

But Original Cost Is an Item to Be Considered.—In fixing fair value, original cost is an item to be considered. State v. Public Service Co. of North Carolina, Inc., 257 N. C. 233, 125 S. E. (2d) 457 (1962).

"Value" Does Not Mean "Market Value" as Second-Hand Property. — The term "value" in this section does not refer to the original or the replacement cost of the property or to the exchange or sales price it would command, as used or second-hand property, on the market. It has reference to the value of the property actually in use, serving its purpose as a part of a composite public utility, earning an income for its owner. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Only Properties Used and Useful in Rendering Service Considered.—In a proceeding by a power company for an increase in the cash fares on its city bus system, the Commission was correct in considering the value only of the properties used and useful in connection with the operation of the bus system without regard to the value of the electric properties of the power company. State v. Greensboro, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

In fixing intrastate rates for a telephone company operating in several states, the Utilities Commission should take into consideration the net return such utility earns on its properties in such other states to the extent of not requiring customers in North Carolina, in order to maintain the utility's financial condition, to pay a substantially higher rate than permitted in other states. A substantial differential might be considered some evidence that the rates charged in this State are unreasonable and unjust to the local public. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Increasing Intrastate Rates to Conform with Interstate Rates Allowed by Interstate Commerce Commission.—Order of Utilities Commission increasing intrastate rates of State carriers so that such rates would conform with an increase in interstate rates allowed by Interstate Commerce Commission was invalid where order was unsupported by proof of the fair value of the properties of the carriers used and useful in conducting their intrastate business, separate and apart from their interstate business. State v. State, 243 N. C. 12, 89 S. E. (2d) 727 (1955).

The financial condition of a public utility and the demand for its bonds and securities which affect its capacity to compete, on the open market, for additional equity and debt capital are ordinarily material considerations in fixing rates. But these factors are of little moment where the applicant has available at all times a fund provided by its parent company from which it may borrow at will for needed improvements or enlargements. What it has to pay for its borrowings from this fund is of more importance. These are some of the "other facts" the statute requires the Commission to consider. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Depreciation Deductions. — For rate-making purposes a public utility is allowed to deduct annually as an operating expense so much of its capital investment as is actually consumed during the current year in rendering the service required of it. But the cost represents the amount of the investment, and it is the actual cost, not theretofore recouped by depreciation deductions, that must constitute the base for this allowance. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Broadly speaking, depreciation is the loss not restored by current maintenance which is due to all the factors causing the ultimate retirement of the property. While property remains in the plant, the estimated depreciation rate is applied to the book cost and the resulting amounts are charged currently as expenses of operation. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

In establishing rates a public utility is entitled to deduct each year as an operating expense only such depreciation as represents the investment currently consumed and not provided against by maintenance. Thus the integrity of the investment is maintained, and this is all the utility has a right to demand. The rate should be fixed, as near as may be, so that it will extend over the usable life of the property being depreciated. Otherwise the allowance will be unjust either to the utility or to the public. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Same—Current Rather than Cost Value of Capital Investment. — An instruction that the current rather than the cost value of capital investment shall be used as the basis for estimating depreciation allowances is incorrect. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

The rate of depreciation allowed by the federal government for income tax purposes is not necessarily the proper rate to be allowed for rate-making purposes. Indeed, for rate-making purposes it would ordinarily be excessive, especially in respect to buildings and like permanent improvements. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Using Property Which Has Been Fully Depreciated for Other Purposes. — It would be unfair to a utility not to take into consideration the present fair value of property now in use but which has been fully depreciated for other purposes. On the other hand, if the rate of depreciation allowed for rate-making purposes is in excess of the investment currently consumed, over and above maintenance costs, it is unfair to the public, for then the company is permitted to recover annually a part of its investment which is not currently consumed. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

The Utilities Commission is not compelled to provide a 6% rate of return to a public utility. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Nor is its former allowance of a rate of return res judicata barring the Commission from fixing a lesser rate in a subsequent proceeding. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

The right of the Commission to consider "all other facts" is not a grant to roam at large in an unfenced field. State v. Public Service Co. of North Carolina, Inc., 257 N. C. 233, 125 S. E. (2d) 457 (1962).

Facts to Be Established by Evidence and Set Forth in Record.—The Legislature properly understood that, at times, other facts may exist, bearing on value and rates, which the Commission should take into account in addition to those specifically detailed in this section; however, it was contemplated that such facts be established by evidence, be found by the Commission, and be set forth in the record to the end of the utility might have them reviewed by the courts. State v. Public Service Co. of North Carolina, Inc., 257 N. C. 233, 125 S. E. (2d) 457 (1962).

Commission May Take Statistical Evidence of Major Carriers as Typical of All Carriers.—See State v. State, 250 N. C. 410, 109 S. E. (2d) 368 (1959).

A schedule of rates fixed by the Commission under the standard prescribed by the legislature is binding upon the interested parties and the courts, provided it is within the bounds of reason. State v. State, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Word "Maximum" Explained. — The word "maximum," used in an order of the Commission for fixing the rates of charges allowed to a petitioning public service corporation, was not intended to mean that a descending rate therefrom was to be allowed under the contract set up by the customers or users, but to distinguish it from the word "minimum," which also was used in reference to the subject. State v. Cannon Mfg. Co., 185 N. C. 17, 116 S. E. 178 (1923).

§ 62-134. Change of rates; notice; suspension and investigation.—(a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this chapter, except after thirty (30) days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the thirty (30) days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

(b) Whenever there is filed with the Commission by any public utility any schedule stating a new rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates. Pending such hearing and the decision thereon, the Commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than two hundred seventy (270) days beyond the time when such rates or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate shall go into effect at the end of such period. After hearing, whether completed before or after the rate goes into effect, the Commission may make such order with respect thereto as would be proper in a proceeding instituted after it had become effective.

(c) At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1.)

Original Complainant.—A utility which files application for authority to amend its rate schedule and complains that its rates are insufficient to provide reasonable and necessary revenue is the original complainant in the proceeding. State v. Martel Mills Corp., 232 N. C. 690, 62 S. E. (2d) 80 (1950).

Requirement as to Notice Implemented by Rule of Commission.—The requirement of the statute that the thirty days' notice of an increase in rates to be given the Utilities Commission properly may be implemented by rule of the Commission requiring that the notice be in writing in triplicate. State v. Atlantic Coast Line R. Co., 224 N. C. 283, 29 S. E. (2d) 912 (1944).

The Utilities Commission's rules of practice and procedure, promulgated under legislative authority, required a defendant, if it desired the vacation or modification of a previous order, to file a written notice of intention to make changes resulting in increases. This would seem to implement the requirements of the statute that thirty days notice of an increase be given the Commission. State v. Atlantic Coast Line R. Co., 224 N. C. 283, 29 S. E. (2d) 912 (1944).

Deferred Use of New Rates Pending Investigation.—After rates for certain intrastate shipments had been duly established by the Utilities Commission and defendant sought to increase such rates by filing tariff schedules to that effect, whereupon the Commission, in a proceeding to which defendant was a party, by order of postponement, which was not objected to, deferred use of the new increased rates, pending investigation, and also directed that the rates previously fixed should not be changed by subsequent tariffs or schedules until this investigation and suspension proceeding had been disposed of, continuing the investigation from time to time at the request of defendant, such action of the Commission was binding on the defendant. However, defendant should be given a reasonable time to comply with the order before penalties might be invoked. State v. Atlantic Coast Line R. Co., 224 N. C. 283, 29 S. E. (2d) 912 (1944).

Optional Schedules. — A public service corporation has a right to maintain optional schedules. High Point v. Duke Power Co., 34 F. Supp. 339 (1940).

§ 62-135. Temporary rates under bond.—(a) Notwithstanding an order of suspension of an increase in rates, any public utility except a common carrier may, subject to the provisions of subsections (b), (c) and (d) hereof, put such suspended rate or rates into effect upon the expiration of six (6) months after the date when such rate or rates would have become effective, if not so suspended, by notifying the Commission and its consumers of its action in making such increase not less than ten (10) days prior to the day when it shall be placed in effect; provided, however, that utilities engaged in the distribution of utility commodities bought at wholesale by the utility for distribution to consumers may put such suspended rate or rates, to the extent occasioned by changes in the wholesale rate of such utility commodity, into effect at the expiration of thirty (30) days after the date when such rate or rates would become effective if not so suspended; provided that no rate or rates shall be left in effect longer than one year unless the Commission shall have rendered its decision upon the reasonableness thereof within such period. This section to become effective July 1, 1963.

(b) No rate or rates placed in effect pursuant to this section shall result in an increase of more than twenty per cent (20%) on any single rate classification of the public utility.

(c) No rate or rates shall be placed in effect pursuant to this section until the public utility has filed with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, or an undertaking approved by the Commission, conditioned upon the refund in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess and interest at the rate of six per cent (6%) per annum from the date that such rates were put into effect, if the rate or rates so put into effect are finally determined to be excessive.

(d) If the rate or rates so put into effect are finally determined to be excessive, the public utility shall make refund of the excess plus interest to its customers within thirty (30) days after such final determination, and the Commission shall set forth in its final order the terms and conditions for such refund. If such refund is not paid in accordance with such order, any persons entitled to such refund may sue therefor, either jointly or severally, and be entitled to recover, in addition to the amount of the refund, all court costs and reasonable attorney fees for the plaintiff, to be fixed by the court. (1933, c. 307, s. 7; 1959, c. 422; 1963, c. 1165, s. 1.)

Editor's Note.—This section became effective July 1, 1963. See Editor's note to § 62-1.

Consumer Not Entitled to Temporary Order Restraining Rate Increase.—Where a public service company has filed bond with the Utilities Commission and obtained authority from the Commission to put into effect increase in rates in the territory served by it, a municipal corporation is not entitled to a temporary order restraining the service company from putting the rates into effect within the municipality upon the assertion that the increase in rates was contrary to contractual provisions in the franchise granted the public service company by the city, since adequate and efficient remedy is afforded the city and its inhabitants by suit upon the bond in the event the increase in rate was not justified in law, and therefore the municipality could not suffer irreparable injury. Durham v. Public Service Co. of North Carolina, Inc., 257 N. C. 546, 126 S. E. (2d) 315 (1962).

§ 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.—(a) Whenever the Commission, after a hearing had after reasonable notice upon its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient and nondiscriminatory rates to be thereafter observed and in force, and shall fix the same by order.

(b) All municipalities in the State are deemed to be directly interested in the rates and service of public utilities operating in such muncipalities, and may institute or participate in proceedings before the Commission involving such rates or service. Any municipality may institute proceedings before the Commission to eliminate unfair and unreasonable discrimination in rates or service by any public utility between such complainant or its inhabitants and any other municipality or its inhabitants, and the Commission shall, upon complaint, after hearing afforded to the public utility affected and to all municipalities affected, have authority to remove such discrimination.

(c) If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded. (Ex. Sess. 1913, c. 20, s. 7; C. S., s. 1083; 1933, c. 134, s. 8; c. 307, s. 8; 1937, c. 401; 1941, c. 97; 1963, c. 1165, s. 1.)

Commission to Investigate Rates upon Request.—The Commission may investigate rates upon the request of any person directly interested. It may hear evidence as to the reasonableness of the maximum rates fixed by law or by the Commission, and establish such rates as it may deem just. The authority conferred upon the Commission is plenary. Corporation Comm. v. Atlantic Coast Line R. Co., 187 N. C. 424, 121 S. E. 767 (1924).

"Complaint Proceeding." — A hearing which involves a single rate or a small part of the rate structure of a public utility is called a "complaint proceeding." It differs from a general rate case in that it deals with an emergency or change of circumstances which does not affect the entire rate structure of the utility and may be resolved without involving the procedure outline in § 62-133, and does not justify the expense and loss of time involved in such procedure. State v. Carolina Power & Light Co., 250 N. C. 421, 109 S. E. (2d) 253 (1959).

General Rate Case. — A proceeding in which a utility seeks an increase in rates for classes of customers providing its major source of revenue in order to provide funds assertedly necessary for continued operation is a general rate case and not a complaint proceeding, even though the increase is not requested for all classes of customers. State v. Tidewater Natural Gas Co., 259 N. C. 558, 131 S. E. (2d) 303 (1963).

§ **62-137. Scope of rate case.**—In setting a hearing on rates upon its own motion, upon complaint, or upon application of a public utility, the Commission shall declare the scope of the hearing by determining whether it is to be a general rate case, under § 62-133, or whether it is to be a case confined to the reasonableness of a specific single rate, a small part of the rate structure, or some classification of users involving questions which do not require a determination of the entire rate structure and over-all rate of return. (1963, c. 1165, s. 1.)

§ **62-138. Utilities to file rates, service regulations and service contracts with Commission; publication.**—(a) Under such rules as the Commission may prescribe, every public utility:

(1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and

(2) Shall keep copies of such schedules, service regulations and contracts open to public inspection.

(b) Every regular route common carrier of general commodities and every common carrier of passengers shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of property or passengers in intrastate commerce and all services in connection therewith between points on its own routes and between points on its own routes and points on the routes of other such common carriers, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates.

(c) Every irregular route common carrier shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of property in intrastate commerce between points within the area of its authorized operation, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates between points within the area of its own authorized operation and points on the line or route of such other common carriers.

(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) No public utility, unless otherwise provided by this chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section. (1899, c. 164, s. 7; Rev., s. 1109; 1907, c. 217, s. 5; C. S., s. 1074; 1933, c. 134, s. 8; c. 307, s. 4; 1941, c. 97; 1947, c. 1008, s. 25; 1949, c. 1132, s. 23; 1959, c. 209; 1963, c. 1165, s. 1.)

§ **62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.**—(a) No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this article, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules.

(b) Any public utility in the State which shall wilfully charge a rate for any public utility service in excess of that prescribed in the schedules of such public utility applicable thereto then filed under this article, and which shall omit to refund the same within thirty (30) days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown, shall be liable to him for double the amount of such overcharge, plus a penalty of ten dollars ($10.00) per day for each day's delay after thirty (30) days from such notice or date of denial or relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction. (1903, c. 590, ss. 1, 2; Rev., ss. 2642, 2643, 2644; Ex. Sess. 1913, c. 20, ss. 5, 12; C. S., ss. 1082, 1086, 3514; 1933, c. 134, s. 8; c. 307, s. 5; 1941, c. 97, 1963, c. 1165, s. 1.)

Cross References. — As to charging higher rates after rates re-established upon reconsideration, see § 62-132. As to venue of action against railroad, see § 1-81.

Constitutionality. — Former § 60-110, prohibiting freight charges in excess of printed tariffs, was not unconstitutional as in violation of the Fourteenth Amendment to the federal Constitution, or the commerce clause of said Constitution, and the acts passed in pursuance thereof. Efland v. Southern R. Co., 146 N. C. 135, 59 S. E. 355 (1907); Iron Works v. Southern R. Co., 148 N. C. 469, 62 S. E. 595 (1908). But see Blalock Hdw. Co. v. Seaboard Air Line R. Co., 170 N. C. 395, 86 S. E. 1025 (1915).

Interstate Shipments.—Under the Interstate Commerce Act, as amended, Congress, in the exercise of the constitutional powers conferred on it, has taken entire control of rates upon interstate shipments of goods, and former § 60-110 was inoperative as to such shipments. Blalock Hdw. Co. v. Seaboard Air Line R. Co., 170 N. C. 395, 86 S. E. 1025 (1915).

For earlier cases holding contra, see Thurston v. Southern R. Co., 165 N. C. 598, 81 S. E. 785 (1914); Macon County Supply Co. v. Tallulah Falls R. Co., 166 N. C. 82, 82 S. E. 13 (1914).

Assuring Service on Equal Basis Fundamental. — A fundamental basis for the regulation of public utilities is to assure that once monopoly powers have been granted, the utility will provide all of its customers similarly situated with service on a reasonably equal basis. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Telephone Company Proscribed from Furnishing Free Service to Municipalities. —The Utilities Commission properly proscribes a telephone company from furnishing service to certain municipalities within its territory free or at a reduced rate, and contractual agreements of a telephone company to do so in consideration for franchise rights to use the streets, alleys and roads in such municipalities for its pole line and underground conduits, are void, since such concessions constitute discrimination against other customers similarly situated. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

At termination of contract between city and electric company, city officials were doubtful whether it would be advantageous to adopt new schedule of electric company and elected to take current on basis from month to month. It was held that the electric company was not exacting an unlawful rate by billing the city for current on rates contained in the old contract rather than under the new schedule. High Point v. Duke Power Co., 34 F. Supp. 339 (1940).

Freight Rates Need Not Be Same for Both Directions.—In shipments to a great distance, special circumstances, such as flow of traffic, may justify a higher rate between two points in one direction than in the opposite; and in action for the recovery of the penalty for excessive freight rates, it is error for the judgment below in effect to charge the jury that such tariff rate published between the two points for freight moving in an opposite direction to that of the shipment in question was conclusive, and that they should be governed in their verdict as to the overcharge accordingly. Scull & Co. v. Atlantic Coast Line R. Co., 144 N. C. 180, 56 S. E. 876 (1907).

Recovery of Excess Caused by Error in Tariff Distance Table.—Where carriers charged rates in accordance with the published tariffs on file but because of error in the tariff distance table the charges were excessive, the shippers could recover the excess charged by petition before the Utilities Commission, the remedy by civil action under former §§ 60-110, 62-138 and 62-139 to recover overcharges and penalties being the proper remedy only when the charges were collected in excess of the published tariffs. State v. Norfolk Southern Ry. Co., 249 N. C. 477, 106 S. E. (2d) 681 (1959).

Freight Charge on Undelivered Shipment. — Where the defendant collected freight charges, for an entire shipment, as invoiced and originally billed, and the sum of 96 cents was paid as freight on that part of the shipment which was "short" and not delivered, this was an overcharge, and failure to refund such overcharge after the sixty days allowed for investigation rendered the defendant liable for the statutory penalty. Cottrell v. Carolina, etc., R. Co., 141 N. C. 383, 54 S. E. 288 (1906).

Penalty Enforceable though Charges Small.—The penalty fixed by former § 60-110 to enforce the duty of a carrier in regard to proper charges for transporting freight and refund of overcharges, which penalty could not in any event exceed $100, was enforceable for a default established against defendant, though the particular transportation charges might appear disproportionately small. It is on failure to return small amounts wrongfully overcharged that penalties are especially required. In large matters the claimant can better afford the cost of litigation. Efland v. Southern R. Co., 146 N. C. 129, 59 S. E. 359 (1907).

Burden of Proving Overcharge. — The burden is upon the plaintiff to show that a freight rate charged and collected by a carrier was in excess of its tariff required of the carrier to be published, when he seeks to recover this excess and the statutory penalty; and where the shipment has been routed over one line of connecting carriers and the tariff filed by the carrier over another route is shown, it affords no evidence as to the rate of the actual route of the shipment, and, in the absence of further evidence, a judgment as of nonsuit should be granted. Blalock Hdw. Co. v. Seaboard Air Line R. Co., 170 N. C. 395, 86 S. E. 1025 (1915)

Agent as Party Aggrieved.—Where under agreement with his principal the agent of a manufacturer is obligated to pay the freight charges on shipments made to him, and upon demand of the carrier he has paid its unlawful charges on a shipment, he is the party aggrieved, and may maintain his action to recover the excess, and also the penalty when settlement has not been made within sixty days, when he has filed written demand supported by the original freight bill and the original or duplicate bill of lading, etc. Tilley v. Southern R. Co., 172 N. C. 363, 90 S. E. 309 (1916).

What Demand Must Specify. — Where the carrier has demanded and received an unlawful freight charge for a shipment, and the party aggrieved has made written demand of the carrier for payment of the overcharge, as required by the statute, it is not necessary, in order to maintain an action for the penalty imposed upon the carrier failing to settle in sixty (now thirty) days, that the written demand specify the penalty, or that demand therefor be made in the justice's court or alleged in the complaint filed on appeal therefrom. Tilley v. Southern R. Co., 172 N. C. 363, 90 S. E. 309 (1916).

Same — Separate Demands in Same Envelope.—The mere fact that the plaintiff inclosed separate written demands in the same envelope, and gave an aggregate amount thereof, in a letter accompanying them, does not affect the demands, being specific, when the overcharges were separate and distinct, the demand made specifically as to each, accompanied separately with the paid freight bill and duplicate bill of lading, and each demand was complete in itself; and such is a compliance with the provisions of the statute. Efland v. Southern R. Co., 146 N. C. 129, 59 S. E. 359 (1907).

§ **62-140. Discrimination prohibited.**—(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section.

(b) The Commission shall make reasonable and just rules and regulations:

(1) To prevent discrimination in the rates or services of public utilities.

(2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of such competitor's service. Provided, further, that nothing herein shall prohibit a public utility from carrying out any contractual commitment in existence at the time of the enactment hereof, so long as such program does not extend beyond December 31, 1963. (1899, c. 164, s. 2, subsecs. 3, 5; Rev., s. 1095; 1913, c. 127, s. 6; C. S., s. 1054; 1933, c. 134, s. 8; c. 307, s. 6; 1941, c. 97; 1963, c. 1165, s. 1.)

Editor's Note.—See 11 N. C. Law Rev. 246.

Common Law.—Former § 60-5, making discrimination in charges by common carriers a misdemeanor, was declaratory of the common law and secured to every person the right to participate in the use of the facilities furnished, or which it is its duty to furnish, by a common carrier upon terms of equality, in regard to price, and otherwise, and free from unlawful discrimination. Lumber Co. v. Atlantic Coast Line R. Co., 141 N. C. 171, 53 S. E. 823 (1906).

The obligation of a public service corporation to serve impartially and without unjust discrimination is fundamental. It is not essential that consumers who are charged different rates for service should be competitors in order to invoke this principle. There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953); State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

What Constitutes Unlawful Discrimination.—Discrimination in freight tariffs by railroad companies, means to charge shippers of freight unequal sums for carrying the same quantity of freight equal distances; that is, more in proportion for a short than for a long distance. Hines v. Wilmington, etc., Railroad, 95 N. C. 434 (1886). As to long and short hauls, see § 62-141.

A common carrier is guilty of unlawful discrimination by the principles of the common law, and the terms of the statute, when it charges one person for service rendered a larger sum than is charged another person for like service under substantially similar conditions. Lumber Co. v. Atlantic Coast Line R. Co., 141 N. C. 171, 53 S. E. 823 (1906).

A carrier cannot rightfully charge one shipper $2.50 per 1,000 feet for hauling his logs if it, at the same time, for the same service, under substantially similar circumstances, carried logs for other persons at $2.10 per 1,000 feet in consideration of the shipment of the manufactured products over its railroad. Lumber Co. v. Atlantic Coast Line R. Co., 141 N. C. 171, 53 S. E. 823 (1906).

Discriminatory Embargoes.—A common carrier cannot place an embargo on its customer or patron so as to discriminate against him or those dealing with him. Garrison v. Southern R. Co., 150 N. C. 575, 64 S. E. 578 (1909).

Different Rate Schedules for Municipalities and Industrial Users of Electrical Energy.—The Commission in determining whether there is a justifiable basis for establishment of different rate schedules for municipalities engaged in resale of electrical energy and industrial users must consider the use characteristics and the load factors as well as the amount of electrical energy purchased under the respective schedules. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

The Commission was justified in placing municipalities engaged in resale of electrical energy, and industrial users, under different schedules based upon a difference in the load factor. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Furnishing free service for municipal purposes in compliance with franchise provisions constitutes an unjust and illegal discrimination. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Rates charged REA cooperatives were not available to municipalities engaged in resale of electrical energy due to the following factors: (1) The cooperatives were required to extend their lines through sparsely settled rural areas with resulting line losses, and (2) the cooperatives were created and operated on a nonprofit basis pursuant to the established public policy of State and federal government. State v. Municipal Corporations, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

An attempted justification of rate differentials by a classification of power furnished as "secondary" and "primary" was held insupportable on the facts. State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953).

Giving Preference to Parent Corporation.—A power company which is a subsidiary of one of its commercial customers may not give a preference to its parent corporation, but must give equal treatment to all its customers similarly situated. State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953).

A railroad carrying logs to a sawmill cannot charge a shipper agreeing to ship the manufactured products by the same line less for the same service than it charges a shipper who makes no such agreement. Lumber Co. v. Railroad, 136 N. C. 479, 48 S. E. 813 (1904).

Party Entitled to Injunctive Relief. — Where certain carriers by truck sought injunctive relief against railroad carriers for discrimination in rates against certain cities and against certain commodities, it was held that the basis for injunctive relief must be an interference or threatened interference with a legal right of the petitioner, not of a third party, and that the shippers would be the real parties in interest, not the contract truck carriers. Carolina Motor Service v. Atlantic Coast Line R. Co., 210 N. C. 36, 185 S. E. 479, 104 A. L. R. 1165 (1936).

Recovery of Excess Charges. — Where a higher freight charge was paid than that charged other shippers, the payment was not to be considered voluntary, and the excess could be recovered back upon account for money had and received, and it was not necessary that at the time of payment there should have been any protest. Lumber Co. v. Atlantic Coast Line R. Co., 141 N. C. 171, 53 S. E. 823 (1906).

Question for Decision of Court.—Where the Utilities Commission concluded upon undisputed facts that there was no unlawful discrimination by a power company in the rates charged its commercial customers, whether the conclusion was supported by competent, material and substantial evidence in view of the entire record was held to present a question of law for the decision of the court. State v. Mead Corp., 238 N. C. 451, 78 S. E. (2d) 290 (1953).

Allegations. — There are discriminations which require more explicit allegations, as for instance, illegal rebates upon freight charges and the like, but as the common carrier for hire, the allegation that it gave a person named undue preference by transporting him free ex vi termini alleges discrimination. State v. Southern Ry. Co., 125 N. C. 666, 34 S. E. 527 (1899).

§ 62-141. Long and short hauls.—(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section. (1899, c. 164, s. 14; Rev., s. 1107; Ex. Sess. 1913, c. 20, s. 9; 1915, c. 17, s. 1; C. S., s. 1072; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-142. Contracts as to rates.—All contracts and agreements between public utilities as to rates shall be submitted to the Commission for inspection that it may be seen whether or not they are a violation of law or the rules and regulations of the Commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing public utilities shall be submitted to the Commission for inspection and approval insofar as they affect the rules and regulations made by the Commission to secure to all persons doing business with such utilities just and reasonable rates. The Commission may make such rules and regulations, as to such contracts and agreements as the public interest may require. (1899, c. 164, s. 6; Rev., s. 1108; C. S., s. 1073; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-143. Schedule of rates to be evidence.** — The schedule of rates fixed by statute or under this article, in suits brought against any public utility involving the rates of a public utility or unjust discrimination in relation thereto, shall be taken in all courts as prima facie evidence that the rates therein fixed are just and reasonable. Any such schedule when certified by a clerk of the Commission as a true copy of a schedule on file with the Commission shall be received in all courts as prima facie evidence of such schedule without further proof, and, if the clerk certifies that said schedule has been approved by the Commission, as prima facie evidence of such approval. (1899, c. 164, s. 7; Rev., s. 1112; C. S., s. 1077; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-144. Free transportation.** — (a) All common carriers under the supervision of the Commission shall furnish free transportation to the members of the Commission, and, upon written authority of the Commission, such carriers shall also furnish free transportation to such persons as the Commission may designate in its employ or in the employ of the Department of Motor Vehicles for the inspection of equipment and supervision of safe operating conditions and of traffic upon the highways of the State.

(b) Except as provided in subsection (a), no common carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, commission agents, employees and retired employees, and members of their immediate families: Provided, that common carriers under this article may exchange free transportation within the limits of this section and may accept as a passenger a totally blind person accompanied by a guide at the usual and ordinary fare charged to one person under such reasonable regulations as may have been established by the carrier and approved by the Commission.

(c) Any person except those permitted by law accepting free transportation shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court.

(d) Nothing in this section shall prohibit the carriage, storage or handling of property free or at reduced rates for the United States, State or municipal governments, or for charitable or educational purposes, or the use of passes for journeys wholly within this State which have been or may be issued for interstate journeys under the authority of the United States Interstate Commerce Commission. (1899, c. 164, s. 22; c. 642; 1901, c. 652; c. 679, s. 2; 1905, c. 312; Rev., s. 1105; Ex. Sess. 1908, c. 144, s. 4; 1911, cc. 49, 148; 1913, c. 100; 1915, c. 215; 1917, cc. 56, 160; C. S., ss. 1069, 1070, 3492; 1933, c. 134, s. 8; 1941, c. 97; 1949, c. 1132, s. 27; 1953, c. 1279; 1963, c. 1165, s. 1.)

Unlawful Transportation. — The transportation, by a common carrier, of any person except of the classes specified without charge, is unlawful, the offense being the actual free transportation and not the issuance of the free pass. State v. Southern R. Co., 122 N. C. 1052, 30 S. E. 133 (1898).

A gratuitous passenger is not in pari delicto with the common carrier McNeill v. Railroad Co., 135 N. C. 682, 47 S. E. 765 (1904).

Injury While Riding on Pass Illegally Issued. — The rights, privileges and protection attaching to the relation of the passenger are imposed by law upon common carriers upon consideration of the public policy, independent of contract, and arise from the nature of their public employment. Hence, one injured while riding on a pass illegally issued may recover from the railroad. McNeill v. Railroad Co., 135 N. C. 682, 47 S. E. 765 (1904).

Construction of Penal Statute.—In construing a penal statute prohibiting discrimination between passengers, the construction placed on it by common carriers generally, and by private individuals and officials, will not be considered. State v. Southern R. Co., 122 N. C. 1052, 30 S. E. 133 (1898).

§ 62-145. Rates between points connected by more than one route.—When there is more than one route between given points in North Carolina, and freight is routed or directed by the shipper or consignee to be transported over a shorter route, and it is in fact shipped by a longer route between such points, the rate fixed by law or by the Commission for the shorter route shall be the maximum rate which may be charged, and it shall be unlawful to charge more for transporting such freight over the longer route than the lawful charge for the shorter route. (Ex. Sess. 1913, c. 20, s. 11; C. S., s. 1085; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Mileage is calculated over the shortest rail line between the point of origin and the point of delivery. State v. Norfolk Southern Ry. Co., 249 N. C. 447, 106 S. E. (2d) 681 (1959).

§ 62-146. Rates and service of motor common carriers. — (a) It shall be the duty of every common carrier by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of property carriers, relating to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(b) Except under special conditions and for good cause shown, a common carrier by motor vehicle authorized to transport general commodities over regular routes shall establish reasonable through routes and joint rates, charges, and classifications with other such common carriers by motor vehicle; and such common carrier may establish, with the prior approval of the Commission, such routes, joint rates, charges and classifications with any irregular route common carrier by motor vehicle, or any common carrier by rail, express, or water.

(c) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through rates with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, and the carrying of personal, sample and excess baggage.

(d) In case of joint rates between common carriers, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this article. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of property in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective, and in the case of passenger carriers, the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes, and joint rates, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maximum or minimum, or maximum and minimum to be charged, and the terms and conditions under which such through routes shall be operated.

(f) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates applicable to the transportation of property in intrastate commerce between a common carrier by motor vehicle and another carrier are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable division thereof to be received by the several carriers; and in cases where the joint rate or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers in accordance with the order from the date of filing the complaint or entry of order of investigation or such other dates subsequent thereto as the Commission finds justified, and in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of property in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical, and efficient management to provide such service.

(i) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. This section shall be in addition to other provisions of this chapter which relate to public utilities generally, except that in cases of conflict between such other provisions and this section, this section shall prevail for motor carriers. (1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1963, c. 1165, s. 1.)

Subsection (c) of this section encourages cooperation and agreements between common carriers respecting their service to the public. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Authority to transport general commodities includes authority to transport meats and packing house products. State v. Forbes Transfer Co., Inc., 259 N. C. 688, 131 S. E. (2d) 452 (1963).

Duty to Establish Joint Rates and Divide Revenues.—Motor carriers of freight in intrastate commerce who exchange freight in the course of delivery are not only given authority but are required to establish joint rates, and provide for the division of revenues derived from such shipments by contract, subject only to the limitation that the contract shall not unduly prefer or prejudice any of the participating carriers. State v. Thurston Motor Lines, Inc., 240 N. C. 166, 81 S. E. (2d) 404 (1954).

Authority of Commission to Interfere with Division of Revenue from Interchanged Freight.—The Utilities Commission is given authority to intervene and vacate a contract for division of revenue from interchanged freight between two intrastate motor carriers only upon its finding after hearing the contractual agreement between the carriers for the division of revenue from such shipments is, or will be, unjust, unreasonable and inequitable, or unduly preferential or prejudicial as between the contracting carriers, and when an order is entered by the Commission without such jurisdictional finding, the cause must be remanded. A finding merely that the Commission does not accept the contractual practice of the carriers as being equitable is insufficient. And the provision of subsection (d), giving the Commission discretionary power to prohibit the establishment of joint rates, is inapplicable. State v. Thurston Motor Lines, Inc., 240 N. C. 166, 81 S. E. (2d) 404 (1954).

Mileage alone is not a sufficient basis for the determination of intrastate rates by the Utilities Commission, but the Commission must consider all factors involved in rate making, including competition from interstate carriers, the different modes of transportation, the topography and volume of business as affecting costs, etc. State v. North Carolina Motor Carriers Ass'n, 253 N. C. 432, 117 S. E. (2d) 271 (1960).

§ **62-147. Rates of motor contract carriers.**—(a) It shall be the duty of every contract carrier to establish and observe reasonable minimum rates for any service rendered or to be rendered in the transportation of property or in connection therewith, and to establish and observe reasonable regulations and practices to be applied in connection with said reasonable minimum rates. It shall be the duty of every contract carrier to file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules containing the minimum rates of such carrier actually maintained and charged for the transportation of property in intrastate commerce, and any rule, regulation, or practice affecting such rates and the value of the service thereunder. No such contract carrier, unless otherwise provided by this article, shall engage in transportation in intrastate commerce unless the minimum rates for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this article. No reduction shall be made in any such rate either directly or by means of any change in any rule, regulation or practice affecting such rate or the value of service thereunder, except after thirty days' notice of the proposed change filed in the aforesaid form and manner, but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules, either in particular instances or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect a less compensation for such transportation than the rates filed in accordance with this paragraph, as affected by any rule, regulation, or practice so filed, or as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive less than the minimum rates so filed or prescribed; provided, that any such carrier or carriers, or any class or group thereof, may apply to the Commission for relief from the provisions of this paragraph, and the Commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the policy declared in this chapter.

(b) Whenever, after hearing, upon complaint or upon its own initiative, the Commission finds that any minimum rate of any contract carrier by motor vehicle, or any rule, regulation, or practice of any such carrier affecting such minimum rate, or the value of the service thereunder, contravenes the policy declared in this chapter, or is in contravention of any provision of this chapter, the Commission may prescribe such just and reasonable minimum rate, or such rule, regulation, or practice as in its judgment may be necessary or desirable in the public interest and to promote such policy and will not be in contravention of any provision of this chapter. Such minimum rate, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the Commission may find to be undue or inconsistent with the public interest and the policy declared in this chapter, and the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(c) Whenever there shall be filed with the Commission by any such contract carrier any schedule stating a rate for a new service or a reduced rate, directly or by means of any rule, regulation, or practice, for transportation in intrastate commerce, the Commission is hereby authorized and empowered upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, or such rule, regulation, or practice, but not for a longer period than two hundred and seventy (270) days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any rate or rule, regulation, or practice shall go into effect at the end of such period. After hearing, whether completed before or after the rate, or rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it has become effective.

(d) At any hearing before the Commission under this paragraph, the burden of proof shall be upon the carrier to show that the changed rate, rule, regulation or practice, or the proposed changed rate, rule, regulation or practice, is just and reasonable.

(e) If any provision of this section is in conflict with any other provision of this chapter, the provisions of this section shall prevail. (1947, c. 1008, s. 26; 1949, c. 1132, s. 24; 1963, c. 1165, s. 1.)

The word "tariff," used in connection with the rates of a common carrier, does not have any special legal significance that would differentiate it in effect from the word "rates," used in this section in connection with a contract carrier. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ **62-148. Rates on leased or controlled utility.**—If any public utility operating in the State other than a motor carrier is owned, controlled or operated by lease or other agreement by any other public utility doing business in the State, its rates may, in the discretion of the Commission, be determined for such public utility by the rates prescribed for the public utility which owns, controls or operates it. (Ex. Sess. 1908, c. 144, s. 2; C. S., s. 3490; 1963, c. 1165, s. 1.)

§ **62-149. Unused tickets to be redeemed.**—Whenever any ticket is sold and is not wholly used by the purchaser, it shall be the duty of the carrier selling such ticket to redeem it or the unused portion thereof at the price paid for it, or in such manner and at such price as the Commission shall prescribe by regulation. (1891, c. 290; 1893, c. 249; 1895, c. 83, ss. 2, 3; 1897, c. 418; Rev., s. 2627; C. S., s. 3503; 1963, c. 1165, s. 1.)

§ **62-150. Ticket may be refused intoxicated person; penalty for prohibited entry.** — The ticket agent of any common carrier of passengers shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The conductor, driver or other person in charge of any conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such conveyance. If any intoxicated person, after being forbidden by the conductor, driver or other person having charge of any such conveyance for the use of the traveling public, shall enter such conveyance, he shall be guilty of a misdemeanor. (1885, c. 358, ss. 1, 2, 3; Rev., ss. 2625, 2626, 3757; C. S., s. 3504; 1963, c. 1165, s. 1.)

Cross References.—As to public drinking on railway passenger cars, see § 14-333. As to sale of whiskey on railroad cars, see § 18-70.

When Exemplary Damages Allowed. — In an action for damages for refusal to allow a person with a ticket to board a train because he was intoxicated, exemplary damages will be allowed if such refusal was made with malice, undue force, or insult. Story v. Norfolk, etc., R. Co., 133 N. C. 59, 45 S. E. 349 (1903).

§ **62-151. Passenger refusing to pay fare or violating rules may be ejected.**—If any passenger shall refuse to pay his fare, or be or become intoxicated, or violate the rules of a common carrier, it shall be lawful for the conductor or driver of the train or bus, or other conveyance, and servants of the carrier, on stopping the conveyance, to put him and his baggage out of the conveyance, using no unnecessary force. (1871-2, c. 138, s. 34; Code, s. 1962; Rev., s. 2629; C. S., s. 3507; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, s. 11; 1963, c. 1165, s. 1.)

Cross Reference. — As to action for damages for wrongful ejection, see also note to § 62-233.

Permission to Ride in Express Car.—Where a party shipped horses by express with an agreement that he should ride in the same car he cannot ride in the passenger coach without paying his fare. Teeter v. Southern Exp. Co., 172 N. C. 616, 90 S. E. 761 (1961).

Ejecting Person from Baggage Car.—A person who gets on a blind baggage car, though he has a ticket, and does not tell the conductor that he has it, and the conductor does not see it, is not entitled to recover as a passenger for injuries received by being pulled off the train by the conductor. McGraw v. Southern R. Co., 135 N. C. 264, 47 S. E. 758 (1904).

Mileage Book Holder Must Comply with Terms. — The holder of a mileage book must comply with its terms if reasonable opportunity is given, or he may be ejected. Mason v. Seaboard Air Line R. Co., 159 N. C. 183, 75 S. E. 25 (1912); McNairy v. Norfolk, etc., R. Co., 172 N. C. 505, 90 S. E. 497 (1916).

Ejection of Party Refusing to Show Mileage Book.—When a purchaser of a mileage book from a railroad company is riding on an exchange ticket and refuses, without excuse, to show his mileage book, in connection with the ticket, to the conductor on the train, he is not regarded as a passenger, and the conductor has the right to eject him from the train. Mason v. Seaboard Air Line R. Co., 159 N. C. 183, 75 S. E. 25 (1912).

Evidence of Drunkenness Inadmissible.—In an action for wrongful ejection from a train, evidence of drunkenness of plaintiff was not admissible, where the answer simply denied the wrongful ejection alleged in the complaint. Raynor v. Wilmington Seacoast R. Co., 129 N. C. 195, 39 S. E. 821 (1901).

Ejection Caused by Failure of Conductor to Return Ticket.—Where the conductor failed to return a ticket to a passenger to be used on another train, and the passenger was ejected therefrom for lack of the ticket, the railroad is liable for all damages attending the ejection. Sawyer v. Norfolk, etc., R. Co., 171 N. C. 13, 86 S. E. 166 (1915).

Reliance on Agent's Statements.—The purchaser of a ticket may rely upon the statements of the railroad agent as to trains, connection, validity of ticket, etc., and if the passenger is ejected as a result of the agent's mistake the railroad is liable. Hallman v. Southern R. Co., 169 N. C. 127, 85 S. E. 298 (1915); Creech v. Atlantic, etc., R. Co., 174 N. C. 61, 93 S. E. 453 (1917).

Carrier Not Liable for Unusual Results.—A conductor requiring an intoxicated man to leave the train for nonpayment of fare did not render the carrier liable for the death of the man from exposure, where the conductor did not have reasonable ground to believe that the man was unable to find his way or walk to the nearest house or to the railroad station, or even to his own father's house, which was not far away. Roseman v. Carolina Cent. R. Co., 112 N. C. 709, 16 S. E. 766 (1893).

As to requirement of former statute that passenger be ejected near usual stopping place or dwelling house, see Roseman v. Carolina Cent. R. Co., 112 N. C. 709, 16 S. E. 766 (1893); Bullock v. Atlantic Coast Line R. Co., 152 N. C. 66, 67 S. E. 60 (1910); McNairy v. Norfolk, etc., R. Co., 172 N. C. 505, 90 S. E. 497 (1916).

§ 62-152. Carriers to establish joint rates.—Any railroad is authorized and directed to enter into arrangements for the establishment of joint rates and through routes with common carriers by water and with other railroads for the transportation of persons and property transported wholly within the State of North Carolina, and it may, with approval of the Commission, establish such joint rates with common carriers by motor vehicle under the provisions of § 62-146. (1931, c. 195; 1963, c. 1165, s. 1.)

§ 62-153. Contracts of public utilities with certain companies and for services.—(a) All public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency, and when requested by the Commission, copies of contracts with any person selling service of any kind. The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. Such contracts so disapproved by the Commission shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder. Provided, however, that in the case of motor carriers of passengers this subsection shall apply only to such contracts as the Commission shall request such carriers to file.

(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval. Provided, however, that this subsection shall not apply to motor carriers of passengers. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 17; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-154. Surplus power rates.—The Commission is authorized to investigate the sale of surplus electric power and the rates made for such energy, and to prescribe reasonable rules and rates for such sales. (1963, c. 1165, s. 1.)

§§ 62-155 to 62-159: Omitted.

ARTICLE 8.

Securities Regulation.

§ 62-160. Permission to pledge assets.—No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the Commission and by order obtain its permission so to do. (1933, c. 307, s. 17; 1963, c. 1165, s. 1.)

§ 62-161. Assumption of certain liabilities and obligations to be approved by Commission; refinancing of public utility securities.—(a) No public utility shall issue any securities, or assume any liability or obligation as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect to the securities of any other person unless and until, and then only to the extent that, upon application by such utility, and after investigation by the Commission of the purposes and uses of the proposed issue, and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, the Commission by order authorizes such issue or assumption.

(b) The Commission shall make such order only if it finds that such issue or assumption is (i) for some lawful object within the corporate purposes of the public utility, (ii) is compatible with the public interest, (iii) is necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and (iv) is reasonably necessary and appropriate for such purpose.

(c) Any such order of the Commission shall specify the purposes for which any such securities or the proceeds thereof may be used by the public utility making such application.

(d) If a public utility shall apply to the Commission for the refinancing of its outstanding shares of stock by exchanging or redeeming such outstanding shares, the exchange or redemption of such shares of any dividend rate or rates, class or classes, may be made in whole or in part, in the manner and to the extent approved by the Commission, notwithstanding any provisions of law applicable to corporations in general: Provided, that the proposed transactions are found by the Commission to be in the public interest and in the interest of consumers and investors, and provided that any redemption shall be at a price or prices, not less than par, and at a time or times, stated or provided for in the utility's charter or stock certificates. (1933, c. 307, s. 18; 1945, c. 656; 1963, c. 1165, s. 1.)

Common Capital Stock of Corporation Is Security. — The common capital stock of a corporation is a security within the meaning of that term as used in this section and § 62-162. State v. Carolina Tel. & Tel. Co., 243 N. C. 46, 89 S. E. (2d) 802 (1955).

§ 62-162. Commission may approve in whole or in part or refuse approval.—The Commission, by its order, may grant or deny the application provided for in the preceding section as made, or may grant it in part or deny it in part or may grant it with such modification and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises and may, from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate and may, by any such supplemental order, modify the provisions of any previous order as to the particular purposes, uses, and extent to which or the conditions under which any securities so authorized or the proceeds thereof may be applied; subject always to the requirements of the foregoing section. (1933, c. 307, s. 19; 1963, c. 1165, s. 1.)

Common Capital Stock as Security. — See note to § 62-161.

Commission Has Authority to Control Issuance and Sale of Capital Stock.—In view of the language used by the legislature in conferring power of the Utilities Commission to supervise and control the issue and sale of securities by a public utility, the Commission had the authority not only to veto the sale of unissued common stock of a utility at par but also to impose the condition that such stock should be sold at a price not less than $125 per share. State v. Carolina Tel. & Tel. Co., 243 N. C. 46, 89 S. E. (2d) 802 (1955).

§ **62-163. Contents of application for permission.**—Every application for authority for such issue or assumption shall be made in such form and contain such matters as the Commission may prescribe. Every such application and every certificate of notification hereinafter provided for shall be made under oath, signed and filed on behalf of the public utility by its president, a vice-president, auditor, comptroller, or other executive officer duly designated for that purpose by such utility. (1933, c. 307, s. 20; 1963, c. 1165, s. 1.)

§ **62-164. Applications to receive immediate attention; continuances.**—All applications for the issuance of securities or assumption of liability or obligation shall be placed at the head of the Commission's docket and disposed of promptly, and all such applications shall be disposed of in thirty (30) days after the same are filed with the Commission, unless it is necessary for good cause to continue the same for a longer period for consideration. Whenever such application is continued beyond thirty (30) days after the time it is filed, the order making such continuance must state fully the facts necessitating such continuance. (1933, c. 307, s. 21; 1963, c. 1165, s. 1.)

§ **62-165. Notifying Commission as to disposition of securities.** — Whenever any securities set forth and described in any such application for authority or certificate of notification as pledged or held unencumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of, by the utility, such utility shall, within ten (10) days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission. (1933, c. 307, s. 22; 1963, c. 1165, s. 1.)

§ **62-166. No guarantee on part of State.**—Nothing herein shall be construed to imply any guarantee or obligation as to such securities on the part of the State of North Carolina. (1933, c. 307, s. 23; 1963, c. 1165, s. 1.)

§ **62-167. Article not applicable to note issues and renewals; notice to Commission.**—The provisions of the foregoing sections shall not apply to notes issued by a utility for proper purposes and not in violation of law, payable at a period of not more than two (2) years from the date thereof, and shall not apply to like notes issued by a utility payable at a period of not more than two (2) years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes, and shall not apply to renewals thereof from time to time not exceeding in the aggregate six (6) years from the date of the issue of the original note or notes so renewed or refunded. No such notes payable at a period of not more than two (2) years from the date thereof, shall, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of securities or another kind of any term or character or from the proceeds thereof without the approval of the Commission. Within ten (10) days after the making of any such notes, so payable at periods of not more than two (2) years from the date thereof, the utility issuing the same shall file with the Commission a certificate of notification, in such form as may be determined and prescribed by the Commission. (1933, c. 307, ss. 24, 25; 1963, c. 1165, s. 1.)

§ **62-168. Not applicable to debentures of court receivers.**—Nothing contained in this article shall limit the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtained in receivership proceedings in courts of equity. (1933, c. 307, s. 25; 1963, c. 1165, s. 1.)

§ **62-169. Periodical or special reports.**—The Commission shall require periodical or special reports from each public utility issuing any security, including such notes payable at periods of not more than two (2) years from the date thereof, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds. (1933, c. 307, s. 26; 1963, c. 1165, s. 1.)

§ **62-170. Failure to obtain approval not to invalidate securities or obligations; noncompliance with article, etc.**—(a) Securities issued and obligations and liabilities assumed by a public utility, for which the authorization of the Commission is required, shall not be invalidated because issued or assumed without such authorization therefor having first been obtained or because issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption.

(b) Securities issued or obligations or liabilities assumed in accordance with all the terms and conditions of the order of authorization therefor shall not be affected by a failure to comply with any provision of this article or rule or regulation of the Commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto.

(c) A copy of any order made and entered by the Commission and certified by a clerk of the Commission approving the issuance of any securities or the assumption of any obligation or liability by a public utility shall be sufficient evidence of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order.

(d) Any public utility which wilfully issues any such securities, or assumes any such obligation or liability, or makes any sale or other disposition of securities, or applies any securities or the proceeds thereof to purposes other than the purposes specified in an order of the Commission with respect thereto, contrary to the provisions of this article, shall be liable to a penalty of not more than ten thousand dollars ($10,000.00), but such utility is only required to specify in general terms the purpose for which any securities are to be issued, or for which any obligation or liability is to be assumed, and the order of the Commission with respect thereto shall likewise be in general terms. (1933, c. 307, s. 27; 1963, c. 1165, s. 1.)

§ **62-171. Commission may act jointly with agency of another state where public utility operates.**—If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, then the Utilities Commission of the State of North Carolina shall have the power to agree with such commission or other agency or agencies of such other state on the issue of stocks, bonds, notes or other evidences of indebtedness by a public utility owning or operating a public utility both in such state and in this State, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue joint certificate of such approval: Provided, however, that no such joint approval shall be required in order to express the consent to an approval of such issue by the State of North Carolina if said issue is separately approved by the Utilities Commission of the State of North Carolina. (1933, c. 134, s. 8; c. 307, s. 28; 1941, c. 97; 1963, c. 1165, s. 1.)

§§ 62-172 to 62-179: Omitted.

Article 9.

Acquisition and Condemnation of Property.

§ 62-180. Use of railroads and public highways.—Any person operating electric power, telegraph or telephone lines or authorized by law to establish such lines, has the right to construct, maintain and operate such lines along any railroad or public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder unreasonably the usual travel on such railroad or highway. (1874-5, c. 203, s. 2; Code, s. 2007; 1899, c. 64, s. 1; 1903, c. 562; Rev., s. 1571; C. S., s. 1695; 1939, c. 228, s. 1; 1963, c. 1165, s. 1.)

Constitutionality. — The provisions of former §§ 56-1 to 56-10, empowering electric power or lighting companies, etc., to condemn lands for the erection of poles, establishment of offices, and other appropriate purposes, were constitutional and valid. Wissler v. Yadkin River Power Co., 158 N. C. 465, 74 S. E. 460 (1912).

Foreign Companies.—The right to construct and operate telegraph lines along any railroad or other public highway in the State, and to obtain the right of way therefor by a condemnatory proceeding, was expressly conferred upon any telegraph company incorporated by this or by any other state. North Carolina, etc., R. Co. v. Carolina Cent., etc., R. Co., 83 N. C. 489 (1880); Yadkin River Power Co. v. Wissler, 160 N. C. 269, 76 S. E. 267 (1912).

No Rights over Private Land.—Former § 56-1 applied to constructing lines along the highway and not to constructing the lines over private land. Wade v. Carolina Tel., etc., Co., 147 N. C. 219, 60 S. E. 987 (1908).

An Additional Burden.—A telegraph line along a railroad and on the right of way of the railroad is an additional burden upon the land, for which the landowner is entitled to just compensation. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902); Hodges v. Western Union Tel. Co., 133 N. C. 225, 45 S. E. 572 (1903); Query v. Postal Tel.-Cable Co., 178 N. C. 639, 101 S. E. 390 (1919). The same rule applies to electric light wires placed along the street. Brown v. Electric Co., 138 N. C. 533, 51 S. E. 62 (1905). But the construction of a street passenger railway does not impose any additional servitude upon the property fronting on the street so occupied. Hester v. Traction Co., 138 N. C. 288, 50 S. E. 411 (1905).

§ 62-181. Electric and hydroelectric power companies may appropriate highways; conditions.—Every electric power or hydroelectric power corporation, person, firm or copartnership which may exercise the right of eminent domain under the chapter Eminent Domain, where in the development of electric or hydroelectric power it shall become necessary to use or occupy any public highway, or any part of the same, after obtaining the consent of the public road authorities having supervision of such public highway, shall have power to appropriate said public highway for the development of electric or hydroelectric power: Provided, that said electric power or hydroelectric power corporation shall construct an equally good public highway, by a route to be selected by and subject to the approval and satisfaction of the public road authorities having supervision of such public highway: Provided further, that said company shall pay all damages to be assessed as provided by law, by the damming of water, the discontinuance of the road, and for the laying out of said new road. (1911, c. 114; C. S., s. 1696; 1939, c. 228, s. 2; 1963, c. 1165, s. 1.)

Cross Reference.—As to what corporations, etc., may exercise the right of eminent domain, see § 40-2.

Change in Section of Highway.—Where a hydroelectric power company has appropriated a section of a public highway and built another section in lieu thereof, the provision of the statute that the company pay all damages assessed as provided by law does not entitle the plaintiff to recover damages for the slight change in the road causing inconvenience to him in hauling wood, etc., to and from his market town. Crowell v. Tallassee Power Co., 200 N. C. 208, 156 S. E. 493 (1931).

§ **62-182. Acquisition of right of way by contract.**—Such telegraph, telephone, or electric power or lighting company has power to contract with any person or corporation, the owner of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the public accommodation. This section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation. (1874-5, c. 203, s. 3; Code, s. 2008; 1899, c. 64; 1903, c. 562, ss. 1, 2; Rev., s. 1572; C. S., s. 1697; 1963, c. 1165, s. 1.)

Cross Reference.—As to recording deeds of easement, see § 47-27.

Owner Must Grant Easement.—A railroad company, not being the owner of the soil, cannot grant an easement to a telegraph company. Hodges v. Western Union Tel. Co., 133 N. C. 225, 45 S. E. 572 (1903). See also Narron v. Wilmington, etc., R. Co., 122 N. C. 856, 29 S. E. 356 (1898).

How Easement Acquired.—A telegraph company can acquire an easement in lands for construction and maintenance of its lines by grant, or pursuant to statute, or by adverse and continuous use for the period of twenty years. Teeter v. Postal Tel.-Cable Co., 172 N. C. 783, 90 S. E. 941 (1916).

§ **62-183. Grant of eminent domain; exception as to mills and water powers.**—Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefor, to the right of way over the lands, privileges and easements of other persons and corporations, including rights of way for the construction, maintenance, and operation of pipelines for transporting fuel to their power plants; and to the right to erect poles and towers, to establish offices, and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works, railroads, or sidetracks, or powerhouses, with the right to divert the water from such ponds or reservoirs, and conduct the same by flume, ditch, conduit, waterway or pipeline, or in any other manner, to the point of use for the generation of power at its said powerhouses, returning said water to its proper channel after being so used. Nothing in this section authorizes interference with any mill or power plant actually in process of construction or in operation; or the taking of water powers, developed or undeveloped, with the land adjacent thereto necessary for their development: Provided, however, that if the court, upon filing of the petition by such electric power or lighting company, shall find that any mill, excepting cotton mills now in operation, whether operated by water power or otherwise, together with the lands and easements adjacent thereto or used in connection therewith, or that any water power, developed or undeveloped, with land adjacent thereto necessary for its development, excepting any water power, right or property of any person, firm or corporation engaged in the actual service of the general public where such water power, right or property is being used or held to be used or to be developed for use in connection with or in addition to any power actually used by such person, firm or corporation serving the general public, is necessary for the development of any hydroelectric power plant which is to be operated for the purpose of generating electric power for sale to the general public, and that said electric power or lighting company is unable to agree for the purchase of such property with the owners thereof, and that the failure to acquire such property will affect the ability of such electric power or lighting company to supply power to the general public, and that the taking of such mill or water power will be greatly more to the benefit of the public than the continued existence of such mill or the continuation of the existing ownership of such water power, then the court, upon such finding, shall make an order authorizing the condemnation of such property and easements in all respects as in the cases of other property referred to in this section. Any provisions in conflict with this chapter in any special charters granted before January 31st, 1907, in respect to the exercise of the right of eminent domain are repealed. (1874-5, c. 203, s. 4; Code, s. 2009; 1899, c. 64; 1903, c. 562; Rev., s. 1573; 1907, c. 74; C. S., s. 1698; 1921, c. 115; 1923, c. 60; 1925, c. 175; 1957, c. 1046; 1963, c. 1165, s. 1.)

Cross Reference. — As to the right of eminent domain in general, see § 40-1 et seq.

Editor's Note.—As to former statutes prohibiting or restricting interference with mills, power plants and water powers, see 1 N. C. Law Rev. 290; 3 N. C. Law Rev. 144.

The General Assembly originally exempted "water powers, developed or undeveloped with the necessary land adjacent thereto for their development" for the purpose of preventing the acquisition of all of the water powers by one or more of the great aggregations of capital. Blue Ridge Interurban R. Co. v. Hendersonville Light. etc., Co., 169 N. C. 471, 86 S. E. 296 (1915).

Right Granted for Public Benefit.—The power of eminent domain is conferred upon corporations affected with public use, not so much for the benefit of the corporations themselves, but for the use and benefit of the people at large. Wissler v. Yadkin River Power Co., 158 N. C. 465, 74 S. E. 460 (1912).

Limitation of Right of Eminent Domain.—The statute limits the right of eminent domain and any special power claimed by the charter must clearly appear. Yadkin River Power Co. v. Whitney Co., 150 N. C. 31, 63 S. E. 188 (1908). See Blue Ridge Interurban R. Co. v. Hendersonville Light, etc., Co., 169 N. C. 471, 86 S. E. 296 (1915).

The right of eminent domain is not necessarily exhausted by a single exercise of the power, but, within the limits established by the general law or special charter, a subsequent or further exercise of the power may be permissible. Thomason v. Railroad, 142 N. C. 318, 55 S. E. 205 (1906); Yadkin River Power Co. v. Wissler, 160 N. C. 269, 76 S. E. 267 (1912).

Effect of Federal Statute.—See Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902).

Quasi-Public Corporations also Conducting Business of Private Character. — Where a charter is granted a corporation, conferring quasi-public as well as private condemn lands when so empowered, in powers, the corporation may proceed to pursuance of its business of a quasi-public nature, and this will not be denied it because it was authorized to conduct a business of a private character. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 171 N. C. 248, 88 S. E. 349 (1916).

Compensation Essential.—Private property may not be taken for public use, directly or indirectly, without just compensation. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902). See §§ 40-16, 40-17 as to fixing compensation.

Conflict of Claims.—Where the claims of two companies conflict, the prior right belongs to that company which first defines and marks its route. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 171 N. C. 248, 88 S. E. 349 (1916).

Effect of Subsequent Charter. — Where a legislative charter has been granted since a statute was passed, the powers given therein are not subject to the restriction of the statute. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 171 N. C. 248, 88 S. E. 349 (1916).

Extent of Rights Usually Determined by Companies.—The extent of the rights to be acquired is primarily and very largely referred to the companies or grantees of the power, and only becomes an issuable question, usually determinable by the court, on allegation of facts tending to show bad faith on the part of the companies, or an oppressive or manifest abuse of their discretion. Love v. R. R., 81 N. C. 432 (1879), cited and distinguished. Yadkin River Power Co. v. Wissler, 160 N. C. 269, 76 S. E. 267 (1912).

Burden of Proof on Defendant.—Where a quasi-public corporation brings action for condemnation, and the defendant resists upon the ground that the lands or power sought to be taken are protected by the statute, the burden of proof is upon the defendant to bring the lands or water power within the provision of the statute excepting them. Blue Ridge Interurban R. Co. v. Hendersonville Light, etc., Co., 171 N. C. 314, 88 S. E. 245 (1916).

Land Used in Developing Power. — A public service corporation, owning lands on one bank of stream, cannot condemn across the stream and take the water rights held in the stream by another public service corporation, when it appears that the defendant holds its lands across the stream to supply power to operate its electric light and power plant, with which it is supplying such light and power to its patrons. Blue Ridge Interurban R. Co. v. Oates, 164 N. C. 167, 80 S. E. 398 (1913); Blue Ridge Interurban R. Co. v. Hendersonville Light, etc., Co., 169 N. C. 471, 86 S. E. 296 (1915).

Applied in Carolina Power, etc., Co. v. Bowman, 229 N. C. 682, 51 S. E. (2d) 191 (1949).

§ 62-184. Dwelling house of owner, etc., may be taken under certain cases. — The dwelling house, yard, kitchen, garden or burial ground of the owner may be taken under § 62-183 when the company alleges, and upon the proceedings to condemn makes it appear to the satisfaction of the court, that it owns or otherwise controls not less than seventy-five per cent (75%) of the fall of the river or stream on which it proposes to erect its works, from the location of its proposed dam to the head of its pond or reservoir; or when the Commission, upon the petition filed by the company, shall, after due inquiry, so authorize. Nothing in this section repeals any part or feature of any private charter, but any firm or corporation acting under a private charter may operate under or adopt any feature of this section. (1907, c. 74; 1917, c. 108; C. S., s. 1699; 1933, c. 134, ss. 7, 8; 1963, c. 1165, s. 1.)

§ 62-185. Condemnation on petition; parties' interests only taken; no survey required.—When such telegraph, telephone, electric power or lighting company fails on application therefor to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privilege or easement of another person or corporation, it is lawful for such company, first giving security for costs, to file its petition before the superior court for the county in which said lands are situate, or into or through which such easement, privilege or franchise extends, setting forth and describing the parcels of land, privilege or easement over which the way, privilege or right of use is claimed, the owners of the land, easement or privilege, and their place of residence, if known, and if not known that fact shall be stated, and such petition shall set forth the use, easement, privilege or other right claimed, and must be sworn to, and if the use or right sought be over or upon an easement or right of way, it shall be sufficient to give jurisdiction if the person or corporation owning the easement or right of way be made a party defendant.

Only the interest of such parties as are brought before the court shall be condemned in any such proceedings, and if the right of way of a railroad or railway company sought to be condemned extends into or through more counties than one, the whole right and controversy may be heard and determined in one county into or through which such right of way extends.

It is not necessary for the petitioner to make any survey of or over the right of way, nor to file any map or survey thereof, nor to file any certificate of the location of its line by its board of directors. (1874-5, c. 203, s. 5; Code, s. 2010; 1899, c. 64, s. 2; 1903, c. 562; Rev., s. 1574; C. S., s. 1700; 1963, c. 1165, s. 1.)

Telegraph, etc., Company Alone Can File Petition.—The telegraph, etc., company alone has the right to file the petition in condemnation proceedings. The landowner is not given such right. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902).

Condemnation Not Confined to Right of Way.—The power of condemnation is not confined to a right of way, delimited by surface boundaries, but may be extended to cutting of trees or removing obstructions outside of these boundaries when required for reasonable preservation and protection of their lines and other property. Yadkin River Power Co. v. Wissler, 160 N. C. 269, 76 S. E. 267 (1912).

No Entry Until Damage Paid.—A telegraph company seeking to condemn a right of way for its line cannot be authorized to enter into possession and construct its line until the damages have been assessed and paid into court. Postal Tel. Cable Co. v. Southern R. Co., 89 F. 190 (1898).

Permanent Damage Awarded. — Permanent damages may be awarded a landowner who was injured by telegraph poles placed on his land. And the company then acquires an easement. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902); Lamberth v Southern Power Co., 152 N. C. 371, 67 S. E. 921 (1910).

Subsequent Purchaser May Recover Damages. — A purchaser of land subsequent to the taking and erection thereon of a telegraph line may recover permanent damages for the easement taken, and the telegraph company thereby acquires the easement and right to maintain its line thereon. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902).

Limitation of City Authority.—Authority granted by a city to the defendant electric company to remove a shade tree in front of the plaintiff's home in order to put up its poles and wires does not justify the act of the defendant in removing the tree; the city has no power to deprive the plaintiff of his own property for such purpose without compensation. Brown v. Electric Co., 138 N. C. 533, 51 S. E. 62 (1905).

When Jury Trial Necessary. — While ordinarily a jury trial is not required in condemnation proceedings, except as to the assessment of damages, the general rule does not apply where the pleadings put at issue the question as to whether the character of the lands is such as to be embraced within the right conferred, or within an exception to that right under the terms of a statute. Blue Ridge Interurban R. Co. v. Oates, 164 N. C. 167, 80 S. E. 398 (1913).

Condemnation of Railroad Right of Way.—The words "right of way" are not used as synonymous with "easement," but, as applied to railroads, they include in their meaning the strip of land over which the track is laid through the country, and which is used in connection therewith, whether the railroad company owns only an easement therein or the title in fee. Postal Tel. Cable Co. v. Southern R. Co., 90 F. 30 (1898).

Same — Petition Need Not State Railroad Company's Tenure.—It is not necessary that a petition asking for the condemnation of a right of way over the right of way of a railroad should state by what tenure the railroad company holds. Postal Tel. Cable Co. v. Southern R. Co., 89 F. 190 (1898).

Same — Proceeding Does Not Affect Landowner Not a Party. — Condemnation proceeding by a telegraph company against a railroad company to condemn the right of way, to which the landowner is not a party, gives no rights against the landowner, but gives rights only against the parties before the court. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902).

Limitation of Federal Statute. — The federal statute authorizing telegraph companies to construct their lines over and along any military or post roads of the United States does not give such companies the right to build their lines over the right of way of a railroad or other private property without the consent of the owner, or the condemnation of the right of way over such property in accordance with the laws of the state where situated. Postal Tel. Cable Co. v. Southern R. Co., 89 F. 190 (1898).

Judgment Necessary to Give Vested Right under Prior Act. — In order to acquire a vested right under a statute to condemn lands, which has subsequently been repealed, it is necessary to show a finality by judgment in the proceedings before the later act has become effective; and where it appears that the summons was served in time, but that the prosecution bond, made a prerequisite by § 1-109, was not, no vested right in the former statute can be acquired by the further prosecution of the condemnation proceedings. Blue Ridge Interurban R. Co. v. Oates, 164 N. C. 167, 80 S. E. 398 (1913).

§ 62-186. Copy of petition to be served.—A copy of such petition, with a notice of the time and place the same will be presented to the superior court, must be served on the persons whose interests are to be affected by the proceeding at least ten (10) days prior to the presentation of the same to the said court. (1874-5, c. 203, s. 6; Code, s. 2011; 1899, c. 64, s. 3; Rev., s. 1575; C. S., s. 1701; 1963, c. 1165, s. 1)

Cross Reference.—As to failure to serve prosecution bond, see note to § 62-185.

§ 62-187. Proceedings as under eminent domain. — The proceedings for the condemnation of lands, or any easement or interest therein, for the use of telegraph, telephone, electric power or lighting companies, the appraisal of the lands, or interest therein, the duty of the commissioners of appraisal, the right of either party to file exceptions, the report of commissioners, the mode and manner of appeal, the power and authority of the court or judge, the final judgment, and the manner of its entry and enforcement, and the rights of the company pending the appeal, shall be as prescribed in article 2 entitled Condemnation Proceedings of the chapter entitled Eminent Domain. (Code, s. 2012; 1899, c. 64; 1903, c. 562; Rev., s. 1576; C. S., s. 1702; 1963, c. 1165, s. 1.)

Editor's Note. — "Court or judge" has been substituted for "court of judge" near the middle of this section.

This section refers to proceedings subsequent to the filing of the petition and the service of the required notices. In other words, it refers to the proceedings after the parties are all before the court. Hence § 40-12, as to filing and service, does not apply. Phillips v. Postal Tel.-Cable Co., 130 N. C. 513, 41 S. E. 1022 (1902).

Amendments to Eminent Domain Statute.—An earlier form of this section provided that eminent domain proceedings on the part of telegraph companies "shall be as prescribed in this chapter for condemning lands to the use of railroad companies." It was held that this provision incorporated into the telegraph statute the provisions of the railroad statute referred to, only as they existed at the time of the enactment, and not as thereafter amended. Postal Tel. Cable Co. v. Southern R. Co., 89 F. 190 (1898).

§ 62-188. Commissioners to inspect premises.—In considering the question of damages when the interest sought is over an easement, privilege or right of way, the commissioners may inspect the premises or rest their finding on such testimony as to them may be satisfactory. (1874-5, c. 203, s. 9; Code, s. 2013; Rev., s. 1577; C. S., s. 1703; 1963, c. 1165, s. 1.)

§ 62-189. Powers granted corporations under chapter exercisable by persons, firms or copartnerships. — All the rights, powers and obligations given, extended to, or that may be exercised by any corporation or incorporated company under this chapter shall be extended to and likewise be exercised and are hereby granted unto all persons, firms or copartnerships engaged in or authorized by law to engage in the business herein described. Such persons, firms, copartnerships and corporations engaging in such business shall be subject to the provisions and requirements of the public laws which are applicable to others engaged in the same kind of business. (1939, c. 228, s. 3; 1963, c. 1165, s. 1.)

§ 62-190. Right of eminent domain conferred upon pipeline companies; other rights.—Any pipeline company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipeline for the public for compensation, and incorporated under the laws of the State, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of the chapter, Eminent Domain, and for the purpose of constructing and maintaining its pipelines and other works shall have all the rights and powers given railroads and other corporations by this chapter and acts amendatory thereof. Nothing herein shall prohibit any such pipeline company granted the right of eminent domain under the laws of this State from extending its pipelines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipeline company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipeline companies shall be deemed public utilities and shall be subject to regulation under the provisions of this chapter. (1937, c. 280; 1951, c. 1002, s. 3; 1957, c. 1045, s. 2; 1963, c. 1165, s. 1.)

Cross Reference. — As to definition of "public utility" including pipeline company, see § 62-3 (23) a 5.

Editor's Note.—See 15 N. C. Law Rev. 364.

§ 62-191. Flume companies exercising right of eminent domain become common carriers.—All flume companies availing themselves of the right of eminent domain under the provisions of the chapter Eminent Domain shall become common carriers of freight, for the purpose for which they are adapted, and shall be under the direction, control and supervision of the Commission in the same manner and for the same purposes as is by law provided for other common carriers of freight. (1907, c. 39, s. 4; C. S., s. 3517; 1933, c. 134, s. 8; 1941, c. 97, § 5; 1963, c. 1165, s. 1.)

Local Modification. — Duplin: 1911, c. 214.

§ 62-192. Map required for railroad condemnation.—(a) Whenever it shall become necessary to condemn any land for the purposes of a railroad, at the time that the summons for such condemnation is served there shall also be served by the railroad company a map showing how the line of the road is to be located on the land sought to be condemned, and a profile showing the depth of the cuts and the height of the embankments on the land so sought to be condemned, and at what points on such land such cuts and embankments are to be located. This section shall not apply to street railways.

(b) Every railroad company shall, within a reasonable time after its road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and shall file the same in the office of the Commission. Every such map shall be drawn on a scale and on paper to be designated by the Commission, and shall be certified and signed by the president or engineer of such company. (1871-2, c. 138, ss. 24, 41; Code, ss. 1952, 1977; 1893, c. 396, s. 2; 1901, c. 6, s. 3; Rev., ss. 2599, 2600; C. S., ss. 3471, 3472; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

Subsection (a) Mandatory.—The conditions of subsection (a) of this section must be complied with before any company can construct any part of its road. Durham, etc., R. Co. v. Richmond, etc., R. Co., 106 N. C. 16, 10 S. E. 1041 (1890).

Same — Defect May Be Cured by Amendment.—The failure to serve a map and profile with the summons in condemnation proceedings may be cured by amendment. State v. Wells, 142 N. C. 590, 55 S. E. 210 (1906).

Purpose of Subsection (b).—By subsection (b) of this section railroad corporations are required, within a reasonable time after their road is constructed, to file a map and profile of their route and of land condemned for its use with the Corporation Commission (now the Utilities Commission). But this is for the information of that body and is not required as a part of a correct and completed location. Fayetteville Street Railway v. Railroad, 142 N. C. 423, 55 S. E. 345 (1906).

Survey Unnecessary When Old Roadbed Adopted.—Where the line of a railroad is clearly defined by the existence of an old roadbed which is entered on and staked out by the agents of the company, and the route so marked is approved and adopted by the directors as its permanent location, in such case a survey by engineers is not essential. Fayetteville Street Railway v. Railroad, 142 N. C. 423, 55 S. E. 345 (1906).

Profile Must Show "Fills" and "Cuts."—The profile required to be filed by subsection (b) of this section must show whether there will be any "fills" or "cuts" on the land sought to be condemned. Kinston, etc., R. Co. v. Stroud, 132 N. C. 413, 43 S. E. 913 (1903).

Railroad Completed before Subsection (b) Passed.—Where the railroad was completed through the locus in quo prior to the passage of subsection (b) of this section, it was not necessary to the validity of the location that a map of the route should be filed. Purifoy v. Richmond, etc., R. Co., 108 N. C. 100, 12 S. E. 741 (1891).

§§ 62-193 to 62-199: Omitted.

ARTICLE 10.

Transportation in General.

§ 62-200. Duty to transport freight within a reasonable time.—(a) It shall be unlawful for any common carrier of property doing business in this

State to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in this State, unless otherwise agreed upon between the carrier and the shipper, or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the Commission.

(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars ($15.00) for the first day and two dollars ($2.00) for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars ($10.00) for the first day and one dollar ($1.00) for each succeeding day, but the forfeiture shall not be collected for a period exceeding thirty (30) days.

(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported freight within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight by similar carriers between the receiving and shipping stations. The Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be prima facie reasonable, and a failure to transport within such times shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the freight from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall be relieved from any penalty for delay in the transportation of freight, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time.

(d) This section shall not apply to motor carriers of passengers. (Code, s. 1964; 1899, c. 164, s. 2, subsecs. 2, 7; 1903, c. 444; c. 590, s. 3; c. 693; 1905, c. 545; Rev., ss. 1094, 2631, 2632; 1907, cc. 217, 461; C. S., ss. 1053, 3515, 3516; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to venue of action against railroad, see § 1-81.

Editor's Note.—Under this section as it formerly stood, a penalty was imposed for unreasonable delay in the transportation of goods. Construing the statute in Alexander v. Atlantic Coast Line R. Co., 144 N. C. 93, 56 S. E. 697 (1907), the court held that the term "transportation" did not include a delivery to consignee at the point of destination, and if goods shipped by a carrier had been properly placed at the point of destination, no penalty was incurred under this section for a negligent delay in delivery from the car or warehouse of the carrier. Subsequently the legislature amended the statute so as to include delays in delivery after transportation had ceased.

For a review of the history of legislative penalties for the refusal of railroads to transport freight, see Grocery Co. v. Southern R. Co., 136 N. C. 396, 48 S. E. 801 (1904).

Constitutionality of Section. — This section is in the nature of a police regulation and is constitutional and valid. Davis v. Southern R. Co., 147 N. C. 68, 60 S. E. 722 (1908); Owens v. Hines, 178 N. C. 325, 100 S. E. 617 (1919).

It does not deny to the carrier the equal protection of the laws. Grocery Co. v. Southern R. Co., 136 N. C. 396, 48 S. E. 801 (1904); Rollins v. Seaboard Air Line Railway, 146 N. C. 153, 59 S. E. 671 (1907).

Does Not Apply to Interstate Shipments. — A penalty may not be recovered of the carrier of an interstate shipment for negligent delay in transportation under this section. Bivens Bros. v. Atlantic Coast Line R. Co., 176 N. C. 414, 97 S. E. 215 (1918). See also Hickory Marble Co. v. Southern R. Co., 147 N. C. 53, 60 S. E. 719 (1908).

Same—Although Both Terminal Points in State.—A penalty under this section cannot be recovered for the failure of a railroad company to transport freight within a reasonable time, when the initial and terminal points are within the State, but the shipment necessarily passes into another state in transitu. Such is interstate commerce and cannot be interfered with by the State. Shelby Ice, etc., Co. v. Southern R. Co., 147 N. C. 66, 60 S. E. 721 (1908).

Carrier's Common-Law Duty Unaltered.—This section does not supersede or alter the duty of carrier at common law, but merely enforces an admitted duty and superadds a penalty. Meredith v. Seaboard Air Line Ry. Co., 137 N. C. 478, 50 S. E. 1 (1905).

Section Strictly Construed. — This is a penal statute, and must be strictly construed. Alexander v. Atlantic Coast Line R. Co., 144 N. C. 93, 56 S. E. 697 (1907).

"Ordinary Time" a Question for Jury.—The question of "ordinary time" for the transportation of freight by the carrier, in a suit for a penalty for failure to transport, under this section, is a question of fact for the jury. Shelby Ice, etc., Co. v. Southern R. Co., 147 N. C. 66, 60 S. E. 721 (1908); Wall-Huske Co. v. Southern R. Co., 147 N. C. 407, 61 S. E. 277 (1908).

In an action for the recovery of a penalty under this section, it was for the jury to find what was "ordinary" time, under the surrounding circumstances, and whether the defendant transported freight within such time; also, the amount of recovery. It is error for the trial court to instruct the jury, if they believe the evidence, to answer the issue in a certain way or in a sum certain. Davis v. Southern R. Co., 147 N. C. 68, 60 S. E. 722 (1908).

Same—No Fixed Rule. — This section does not fix a "hard and fast" rule in defining reasonable time. Jenkins v. Southern R. Co., 146 N. C. 178, 59 S. E. 663 (1907).

Same—Burden of Proof.—When the evidence discloses that the time taken by the railroad company for transporting goods, etc., was prima facie reasonable as fixed by the statute, the question of reasonable time is one for the jury to measure by the statutory standard, the burden of proof being upon the plaintiff. Alexander v. Atlantic Coast Line R. Co., 144 N. C. 93, 56 S. E. 697 (1907).

Same—Evidence.—In an action to recover the penalty given by this section, the burden of proof is on the plaintiff to show that the carrier failed to transport and deliver the goods within a reasonable time, which is defined to be the "ordinary time" required to transport and deliver. This may be shown by proving the distance over which the goods are to be transported and the time consumed therein. From this evidence the jury may, as a matter of common knowledge and observation, draw the conclusion whether, in view of the usual speed of freight trains, the time consumed, the distance, and other conditions, the carrier has failed to transport and deliver within a reasonable time. Jenkins v. Southern R. Co., 146 N. C. 178, 59 S. E. 663 (1907).

Same — Illustrations. — When there was evidence that the time in transporting a certain shipment from one station to another only 25 miles away, on the same railroad, was twelve days, the jury would be permitted, from their common observation and experience, to consider and determine the question of ordinary time between the two points, and, in the absence of explanation by defendant, fix the amount of wrongful delay. Rollins v. Seaboard Air Line Railway, 146 N. C. 153, 59 S. E. 671 (1907).

When it was admitted that certain articles were received by defendant, to be transported and delivered to plaintiff, the party aggrieved, the place of shipment and destination both being in the State, 58 miles apart, with but one intermediate point between them, and that the articles were not delivered to plaintiff within twenty-one days, the delay was unreasonable. Watson v. Atlantic Coast Line R. Co., 145 N. C. 236, 59 S. E. 55 (1907).

Delay of Two Days at Initial Point and Forty-Eight Hours at Intermediate Point—Former Law.—For cases construing a former provision making a delay of two days at the initial point and forty-eight hours at one intermediate point for each hundred miles prima facie reasonable, see Meredith v. Seaboard Air Line Ry. Co., 137 N. C. 478, 50 S. E. 1 (1905); Davis v. Atlantic Coast Line R. Co., 145 N. C. 207, 59 S. E. 53 (1907); Watson v. Atlantic Coast Line R. Co., 145 N. C. 236, 59 S. E. 55 (1907); Jenkins v. Southern R. Co., 146 N. C. 178, 59 S. E. 663 (1907); Wall-Huske Co. v. Southern R. Co., 147 N. C. 407, 61 S. E. 277 (1908); Blue Ridge Collection Agency v. Southern R. Co., 147 N. C. 593, 61 S. E. 462 (1908); Talley v. Atlantic Coast Line R. Co., 198 N. C. 492, 152 S. E. 390 (1930).

When Transportation Ceases. — Transportation ceases when the duty of the carrier as a warehouseman commences, and in respect to freight transported in carload lots, when the car reaches destination and is placed for unloading. What particular parts of the carrier's tracks and freight yards may be used for such purposes must of necessity be left to its discretion, but the car must be reasonably accessible and placed for delivery before transportation is fully ended. Brooks Mfg. Co. v. Southern R. Co., 152 N. C. 665, 68 S. E. 243 (1910).

Transportation does not cease when a carload is placed by the carrier within the yard limits of the point of destination. Wall-Huske Co. v. Southern R. Co., 147 N. C. 407, 61 S. E. 277 (1908).

Negligent Default in Delivery. — This section extends the penalty to cases of negligent default in the carrier's making delivery of the freight to the consignee. Mitchell v. Atlantic Coast Line R. Co., 183 N. C. 162, 110 S. E. 859 (1922).

Delivery Does Not Have to Be on Private Tracks.—This section does not apply to a delivery on the private tracks of a consignee, but to avoid the penalty it is required of the carrier to place for delivery a carload shipment on its track at destination at a place reasonably accessible. Brooks Mfg. Co. v. Southern R. Co., 152 N. C. 665, 68 S. E. 243 (1910).

Duty to Notify Consignee. — Where a shipment of goods is delivered to a railroad company for transportation, the title vests in the consignee, with the duty resting upon the carrier on the arrival of the goods at destination to notify the consignee and make delivery. This principle applies to a side-station when notification of arrival should have been given from a nearby station, and the inquiring consignee was there misinformed as to the arrival, and the car in the meanwhile was broken into and the shipment stolen. Acme Mfg. Co. v. Tucker, 183 N. C. 303, 111 S. E. 525 (1922).

When Goods Travel Over Several Lines. —When the initial carrier delivers goods to its connecting carrier, necessary for them to be by it further transported to their destination, and an unreasonable delay occurs, without evidence as to which carrier was responsible for the delay, the defendant, the initial carrier, is liable for the entire delay, the burden of proof being upon it as the party having the evidence peculiarly within its own knowledge or possession. Watson v. Atlantic Coast Line R. Co., 145 N. C. 236, 59 S. E. 55 (1907).

Same—Parties to Action.—Where an intrastate shipment of goods is transported over connecting lines to its destination, it is proper for the trial court to make both roads parties to an action to recover the penalty for the failure to transport safely and within a reasonable time, the burden being upon each defendant to show that it had not failed in its duty. Sellars Hosiery Mills v. Southern R. Co., 174 N. C. 449, 93 S. E. 952 (1917).

Who Is "Party Aggrieved."—The plaintiff is entitled to recover the penalty as the "party aggrieved," under this section, for the defendant's wrongfully failing to transport freight within a reasonable time, where the facts show that, from the attendant circumstances or terms of the agreement, he is the one whose legal right is denied and who is alone interested in having the transportation properly made. Cardwell v. Southern R. Co., 146 N. C. 218, 59 S. E. 673 (1907).

Same — Where Goods to Be Sold for Consignor's Benefit. — The plaintiff may maintain his action against the defendant railroad company, under this section, for wrongful failure to transport certain goods received by the latter, and bill of lading issued by it to plaintiff, when it appears that plaintiff shipped the goods to be for his benefit sold by the consignee, and that he (the plaintiff) was the one who alone acquired the right to demand the service to be rendered by the defendant, and was the party aggrieved. Rollins v. Seaboard Air Line Railway, 146 N. C. 153, 59 S. E. 671 (1907).

When the consignor ships goods to be sold for his own benefit, he is the "party aggrieved," under this section, and the proper party plaintiff. Robertson v. Atlantic Coast Line R. Co., 148 N. C. 323, 62 S. E. 413 (1908).

Same—Goods Not to Be Paid for until Delivery.—When the consignor had agreed with the consignee that the latter was only required to pay for the intrastate shipment when it reached its destination the consignor may maintain his action for delay in transitu, as the party aggrieved. Davis v. Southern R. Co., 147 N. C. 68, 60 S. E. 722 (1908).

When, by the contract or agreement between a vendor and vendee of goods, the goods are to be "received, inspected and weighed" by the vendee before any part of the purchase price is payable, the title does not vest in the vendee, and the vendor is the "party aggrieved" within the meaning of this section. Elliott v. Southern R. Co., 155 N. C. 235, 71 S. E. 339 (1911).

Same—Notice Immaterial.—When it is shown that the plaintiff is the "party aggrieved," under this section, it is of no importance and bears in no way on the justice of plaintiff's demand or of defendant's obligation, whether defendant knew who was the party aggrieved, either at the inception of the matter or at any other time. Rollins v. Seaboard Air Line Railway, 146 N. C. 153, 59 S. E. 671 (1907).

The real "party aggrieved" is entitled to recover the penalty, under this section, irrespective of the question of knowledge of or notice to the defendant. Cardwell v. Southern R. Co., 146 N. C. 218, 59 S. E. 673 (1907).

Action Not Brought "on Relation of State."—Under this section, the action for penalty is given directly to the party aggrieved, and is not required to be brought "on relation of the State." If it were, failure to bring the action in such form would be a mere informality, which could be remedied by amendment. Robertson v. Atlantic Coast Line R. Co., 148 N. C. 323, 62 S. E. 413 (1908).

Joinder of Actions.—An action for damages against a carrier for a lost shipment, and one for the penalty for unreasonable delay given by this section, do not merge into each other. They arise on contract and may be joined in the same action. Robertson v. Atlantic Coast Line R. Co., 148 N. C. 323, 62 S. E. 413 (1908).

Burden of Proof as to Destruction of Goods. — The burden of proof is on the carrier to show that it is relieved of the penalty prescribed by this section because the goods were burned, stolen or destroyed. That the goods were placed in defendant's car by the initial carrier, that search had been made therefor, without stating how thorough, and the absence of evidence that the goods had since been seen, is no evidence that they were burned, stolen or destroyed. Robertson v. Atlantic Coast Line R. Co., 148 N. C. 323, 62 S. E. 413 (1908).

When Bill of Lading Not Presumptive Evidence. — When it was the consignor's duty to load a car for shipment, which had been placed at its mill by the carrier, and the carrier's agent gave a bill of lading upon the statement of the consignor that the car had been loaded, without being required to verify the statement, the bill of lading is not presumptive evidence of the receipt of the contents of the car, and the question is an open one for the jury in a suit by the consignee for the penalty for failure to deliver under this section. Peele v. Atlantic, etc., R. Co., 149 N C. 390, 63 S. E. 66 (1908).

Sufficiency of Evidence on Motion for Nonsuit. — Where a shipment of various articles was transported by the carrier to destination, and all were received by the consignee, except one of them, which was missing, and remained in the carrier's warehouse beyond the statutory reasonable time, a motion for nonsuit was properly denied. Mitchell v. Atlantic Coast Line R. Co., 183 N. C. 162, 110 S. E. 859 (1922).

Issues.—An issue which presupposes a failure on defendant's part in its duty to transport freight, in an action for penalty under this section, is objectionable. Davis v. Southern R. Co., 147 N. C. 68, 60 S. E. 722 (1908).

Verdict Incomplete.—Where it is established by the jury that a consignment of goods was carried to the delivering point by the carrier, which failed to deliver to the consignee, or to notify him, and the goods were lost while in its possession, the verdict is incomplete where there was no issue submitted as to whether the carrier, who is a party to the action, was in default in not delivering the goods to the consignee. Acme Mfg. Co. v. Tucker, 183 N. C. 303, 111 S. E. 525 (1922).

Applied in Alexander v. Atlantic Coast Line R. Co., 144 N. C. 93, 56 S. E. 697 (1907).

§ 62-201. Freight charges to be at legal rates; penalty for failure to deliver to consignee on tender of same.—All common carriers doing business in this State shall settle their freight charges according to the rate stipulated in the bill of lading, provided the rate therein stipulated be in conformity with the classifications and rates made and filed with the North Carolina Utilities Commission in the case of intrastate shipments, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carriers to inform any consignee of the correct amount due for freight according to such classification and rates. Upon payment or tender of the amount due on any shipment which has arrived at its destination according to such classification and rates, such common carrier shall deliver the freight in question to the consignee. Any failure or refusal to comply with the provisions hereof shall subject such carrier so failing or refusing to liability for actual damages plus a penalty of fifty dollars ($50.00) for each such failure or refusal, to be recovered by any consignee aggrieved by a suit in a court of competent jurisdiction. Provided, however, that this section shall not apply to motor carriers of passengers. (1905, c. 330, s. 1; Rev., s. 2633; C. S., s. 3518; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

Cross References.—As to obligations and rights of carriers upon bills of lading, see § 21-9 et seq. As to rates of public utilities, see § 62-130 et seq. As to venue of action against railroad, see § 1-81.

Constitutionality of Section.—The penalty for failure of a common carrier to deliver freight, as prescribed by this section, shipped from beyond the State, after it has been unloaded from its cars and while in the depot, is constitutional and not a burden upon interstate commerce. Hockfield v. Southern R. Co., 150 N. C. 419, 64 S. E. 181 (1909); Jeans v. Seaboard Air Line R. Co., 164 N. C. 224, 80 S. E. 242 (1913).

A railroad company owes it as a common-law duty to deliver freight upon tender of lawful charges by the consignee, and, in the absence of a conflicting regulation by Congress, this section, imposing a penalty upon default of the railroad company therein, is constitutional and valid, and is an aid to, rather than a burden upon, interstate commerce. Harrill Bros. v. Southern R. Co., 144 N. C. 532, 57 S. E. 383 (1907).

Foreign Corporation Bound to Obey State Laws.—Where a railroad corporation chartered by another state leases a railroad chartered by this State, it is bound to observe and obey all laws of this State regulating the business of transportation. Hines v. Wilmington, etc., R., 95 N. C. 434 (1886).

Intrastate Rebilling of Interstate Shipment. — An interstate shipment of goods which was missent, bill of lading lost, and rebilled from one point in the State to another therein, in an intrastate shipment, and upon the carrier's violating the provisions of this section, the penalty therein accrues. Hockfield v. Southern R. Co., 150 N. C. 419, 64 S. E. 181 (1909).

Section Not Cumulative. — This section imposes only one penalty for the refusal of the railroad company to deliver freight upon demand and tender of charges, and it is not cumulative upon more than one demand for the same offense. Harrill Bros. v. Southern R. Co., 144 N. C. 532, 57 S. E. 383 (1907).

Consignee Must Produce Bill of Lading.—A consignee must produce, upon the carrier's demand, a bill of lading for a prepaid shipment of goods in the carrier's possession. Jeans v. Seaboard Air Line R. Co., 164 N. C. 224, 80 S. E. 242 (1913).

Insufficient Notice to Consignee. — Notice given by a carrier of the arrival of goods to a transfer company in the habit of hauling consignor's goods from the depot is not of itself sufficient notice to the consignee. Hockfield v. Southern R. Co., 150 N. C. 419, 64 S. E. 181 (1909).

Burden of Proving Reason for Refusal to Deliver. — Where the consignee brings his action to recover the value of a shipment of goods from the carrier, shows that the shipment was addressed to him, was prepaid, in the carrier's possession at destination, and a demand for delivery, the burden is on the carrier to show a valid reason for its refusal to deliver the shipment. Jeans v. Seaboard Air Line R. Co., 164 N. C. 224, 80 S. E. 242 (1913).

No Liability for Unlawful Shipment.—A druggist who has not received a valid license to sell intoxicating liquors for the purposes and in the manner indicated, may not recover of the carrier the penalty provided by this section, for the failure to deliver such liquors to him for the purposes of sale, for such are unlawful and prohibited. Smith v. Southern Express Co., 166 N. C. 155, 82 S. E. 15 (1914).

Carrier Cannot Collect Storage for Illegal Detention.—A carrier cannot enforce collection of storage charges arising from its wrongful refusal to deliver goods to consignee. Hockfield v. Southern R. Co., 150 N. C. 419, 64 S. E. 181 (1909).

Agent Ignorant of Amount of Charges.—It is no defense to an action to recover a penalty for refusing to deliver shipment upon tender of freight charges by the consignee, for the defendant company to show its agents did not know the correct amount of the charges because of the defendant's failure to file its schedule of rates. Harrill Bros. v. Southern R. Co., 144 N. C. 532, 57 S. E. 383 (1907).

Rate When Smaller Cars Furnished. — Where a consignor requested two cars of a certain standard size and the carrier furnished four cars of a smaller size the rate for the shipment must be the same. Yorke Furniture Co. v. Railroad, 162 N. C. 138, 78 S. E. 67 (1913).

Applied in Atlantic Coast Line R. Co. v. West Paving Co., 228 N. C. 94, 44 S. E. (2d) 523 (1947).

§ **62-202. Baggage and freight to be carefully handled.**—All common carriers shall handle with care all baggage and freight placed with them for transportation, and they shall be liable in damages for any and all injuries to the baggage or freight of persons from whom they have collected fare or charged freight while the same is under their control. Upon proof of injury to baggage or freight in the possession or under the control of any such carrier, it shall be presumed that the injury was caused by the negligence of the carrier. This section shall not apply to motor carriers of passengers. (1897, c. 46; Rev., s. 2624; C. S., s. 3523; 1963, c. 1165, s. 1.)

Cross References.—As to conveying livestock in a cruel manner, see § 14-363. As to carrier's liability for misdelivery, see § 21-11.

Delivery to Carrier Necessary to Fix Responsibility. — To fix the responsibility for lost baggage upon a railroad company, either as a common carrier or warehouseman, a delivery, actual or constructive, including an acceptance by the company, is necessary; and in order to a valid delivery the general rule is that when baggage is taken by others to the station, and to places where baggage is usually received, some kind of notice must be given to the agent authorized to receive it. Williams v. Southern R. Co., 155 N. C. 260, 71 S. E. 346 (1911).

Same—Estoppel.—The requisites of the general rule requiring delivery of baggage of a passenger to a railroad company in order to hold the company liable may become modified by a custom of the latter to consider and treat baggage as received when left at a given place, without further notice. Williams v. Southern R. Co., 155 N. C. 260, 71 S. E. 346 (1911).

Stipulations Limiting Liability. — Stipulations upon a railroad ticket, limiting the liability of the carrier in a specified sum "unless a greater value has been declared by the owner and excess charge paid thereon at the time of taking passage," and similar provisions in a bill of lading for the transportation of freight, are void as an attempt on the part of the carrier to contract against its own negligence. Cooper v. Norfolk Southern R. Co., 161 N. C. 400. 77 S. E. 339 (1913).

A common carrier cannot contract with a passenger against the loss of baggage by its negligence. Thomas v. Southern R. Co., 131 N. C. 590, 42 S. E. 96- (1902).

Liability for Articles Not Properly Baggage.—While the obligation of a carrier of passengers is limited to ordinary baggage, yet if it knowingly permits a passenger, either with or without payment of an extra charge, to take articles as baggage which are not properly such, it will be liable for their loss or for damage to them, though it may have been without any fault. Trouser Co. v. Seaboard Air Line R. Co., 139 N. C. 382, 51 S. E. 973 (1905).

When Liability as Carrier Ceases. — When the baggage has arrived at its destination and has been deposited at the usual or customary place of delivery and kept there a sufficient time for the passenger to claim and remove the same, the company's liability as a common carrier ceases, and it is thereafter liable only as a warehouseman, and bound to the use of ordinary care. Trouser Co. v. Seaboard Air Line R. Co., 139 N. C. 382, 51 S. E. 973 (1905).

Liability When Passenger Not Carried.—When there is no partnership arrangements between connecting lines of railroads, and a passenger buys a through ticket from a carrier to his destination on a connecting line, checks his trunk through to his destination and voluntarily returns to the starting point without going upon the road of the connecting lines, the latter carrier is not liable as insurer of the contents of the trunk from larceny by reason of taking the trunk to its destination, storing it there in its baggage room until its return was requested and then forwarding it to the junctional point, without compensation. Kindley v. Seaboard Air Line Ry. Co., 151 N. C. 207, 65 S. E. 897 (1909).

Baggage Not on Same Train.—The passenger's right to a limited amount of baggage as a part of the consideration for the price of his ticket is upon the condition that the baggage accompany the passenger on the same train; and where without any default on the part of the carrier, its agent, without further charge, has the baggage forwarded on a later train, the carrier's liability is not that of an insurer, but of a gratuitous bailee, under the rule of the prudent man, and attaches only in instances of gross negligence. Perry v. Seaboard Air Line R. Co., 171 N. C. 158, 88 S. E. 156 (1916).

§ 62-203. Claims for loss or damage to goods; filing and adjustment.—(a) Every common carrier receiving property for transportation in intrastate commerce shall issue a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any carrier participating in the haul when transported on a through bill of lading, and any such carrier delivering said property so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage, or injury, notwithstanding any contract or agreement to the contrary; provided, however, the Commission may, by regulation or order, authorize or require any such common carrier to establish and maintain rates related to the value of shipments declared in writing by the shipper, or agreed upon as the release value of such shipments, such declaration or agreement to have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, in which case, any tariff filed pursuant to such regulation or order shall specifically refer thereto; provided further, that a rate shall be afforded the shipper covering the full value of the goods shipped; provided further, that nothing in this section shall deprive any lawful holder of such bill of lading of any remedy or right of action which such holder has under existing law; provided further, that the carrier issuing such bill of lading, or delivering such property so received and transported, shall be entitled to recover from the carrier on whose route the loss, damage, or injury shall have been sustained the amount it may be required to pay to the owners of such property.

(b) Every claim for loss of or damage to property while in possession of a common carrier, including every express company or person doing an express business within the State, shall be adjusted and paid within ninety (90) days after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee, or at the point of origin by the consignor, when it shall appear that the consignee was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

(c) In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars ($50.00) for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

(d) A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of a common carrier, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf. If such check be refused on demand, the common carrier shall pay to such passenger the sum of ten dollars ($10.00), to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the carrier.

(e) If a passenger, whose bag has been checked, shall produce the check and his baggage shall not be delivered to him, he may by an action recover the value of such baggage.

(f) Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint.

(g) This section shall not deprive any consignee or consignor of any other rights or remedies existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers.

(h) This section shall not apply to motor carriers of passengers and only subsection (a) of this section shall apply to motor carriers of property. (1871-2, c. 138, s. 36; Code, s. 1970; 1905, c. 330, ss. 2, 4, 5; Rev., ss. 2623, 2634, 2635; 1907, c. 983; 1911, c. 139; C. S., ss. 3510, 3524, 3525; 1947, c. 781; c. 1008, s. 27; 1963, c. 1165, s. 1.)

I. General Consideration.
II. Connecting Carriers.
III. Claim against Carriers.
IV. Actions.

I. GENERAL CONSIDERATION.

Subsections (b) and (c) Must Be Strictly Construed and Followed.—Subsections (b) and (c) of this section are a penal statute, and in order to recover, the plaintiff must bring his case strictly within their terms. Watkins v. American Ry. Express Co., 190 N. C. 605, 130 S. E. 305 (1925).

The penalty imposed by subsection (c) is to enforce obedience to the mandate of the law by punishment of the carrier, and the statute must be strictly construed, requiring the consignee to bring his case clearly within its language and meaning. Eagles Co. v. East Carolina Ry., 184 N. C. 66, 113 S. E. 512 (1922).

Common-Law Remedies.—The common-law remedies of shippers and passengers are not taken away by the provisions of this chapter. Bell v. Norfolk Sou. R. Co., 163 N. C. 180, 79 S. E. 42 (1913), and cases there cited.

Action May Be Brought in Contract or Tort.—A person who has sustained injuries by reason of the failure of a railroad company to provide proper means of transportation or operate its trains may bring an action on contract, or in tort, independent of the statute. Purcell v. Richmond & Danville R. Co., 108 N. C. 414, 12 S. E. 954 (1891); Va.-Carolina Peanut Co. v. Atlantic Coast Line R. Co., 155 N. C. 148, 71 S. E. 71 (1911).

Parol Agreement to Ship Sufficient.—When a carrier has received goods for transportation over its own and a connecting line which were not delivered, and upon consignor's parol request it has them reshipped to the initial or starting point, the latter agreement for reshipment, though resting in parol, is sufficient in an action for damages to the goods occurring while in the carrier's possession. Lyon v. Atlantic Coast Line R. Co., 165 N. C. 143, 81 S. E. 1 (1914).

Carrier Cannot Contract against Own Negligence.—A common carrier may relieve itself from liability as an insurer upon a contract reasonable in its terms and founded upon a valuable consideration, but it cannot so limit its responsibility for loss or damage resulting from its negligence. Mitchell v. Carolina Cent. R. Co., 124 N. C. 236, 32 S. E. 671 (1899); Everett v. Norfolk, etc., R. Co., 138 N. C. 68, 50 S. E. 557 (1905).

Owner Cannot Refuse Damaged Goods.—Damages to a shipment of goods by a railroad company, caused by the carrier's negligence, does not justify the owner in refusing to accept them on that account, unless the damages are sufficient to render the goods practically worthless. He must accept the goods and sue for the damages upon the refusal of the carrier to pay them. Whittington v. Southern R. Co., 172 N. C. 501, 90 S. E. 505 (1916).

II. CONNECTING CARRIERS.

Duty Assumed by Carrier. — Where a carrier accepts goods for transportation, in the absence of a special contract, it assumes the duty of safely carrying, within a reasonable time, the goods to the end of its line, and delivering them in like condition to the connecting carrier. Meredith v. Seaboard Air Line Ry. Co., 137 N. C. 478, 50 S. E. 1 (1905).

Duration of Duty of Safe Carriage.—The duty of safe carriage attaches as the goods pass into the custody of each company and ceases only when they are safely delivered to its successor. Lindley v. Richmond, etc., R. Co., 88 N. C. 547 (1883).

Burden of Proof as to Safe Delivery.—On proof that a carrier received goods in good condition, the burden of proof rests upon such carrier to show delivery in the same condition to the next carrier or to the consignee, such proof being peculiarly within its power. Meredith v. Seaboard Air Line Ry. Co., 137 N. C. 478, 50 S. E. 1 (1905).

Admissibility of Evidence. — To show that the freight was in good condition when it was delivered by the defendant to a connecting line, evidence that it is the custom of agents of such lines to examine freights before receiving them, and if found in good condition to forward them, and that such examination was made and forwarding was done, is admissible. Knott v. Raleigh, etc., R. Co., 98 N. C. 73, 3 S. E. 735 (1887).

Prima Facie Case.—Where a shipment of goods is received by the consignee from the final carrier in bad condition, and there is evidence that this carrier received the goods from its connecting carrier in good condition, a prima facie case of negligence is made out against the delivering carrier, and presents sufficient evidence thereof to be submitted to the jury, with the burden of proof on it. Lyon v. Atlantic Coast Line R. Co., 165 N. C. 143, 81 S. E. 1 (1914).

Presumption of Damage.—Among connecting lines of railway, that one in whose hands goods are found damaged is presumed to have caused the damage and the burden is upon it to rebut the presumption. Morganton Mfg. Co. v. Ohio, etc., R. Co., 121 N. C. 514, 28 S. E. 474 (1897); Mitchell v. Carolina Central R. Co., 124 N. C. 236, 32 S. E. 671 (1899); Gwyn Harper Mfg. Co. v. Carolina Central R., 128 N. C. 280, 38 S. E. 894 (1901).

Same—Goods Found Damaged at Destination.—When goods are shipped over several connecting lines of carriers and are found in a damaged condition at destination, there is a rebuttable presumption that the injury was negligently inflicted by the last carrier. Boss v. Atlantic Coast Line R. Co., 156 N. C. 70, 72 S. E. 93 (1911). This is on the principle that as the carrier is peculiarly in a position to know the facts, the burden of proof should rest on it. Beville v. Atlantic Coast Line R. Co., 159 N. C. 227, 74 S. E. 349 (1912).

Liability for Negligence of Connecting Carrier. — A railroad company whose line is one of several connecting roads between places from and to which freight is shipped, in the absence of a special contract, or proof of copartnership by which each of the connecting lines will become liable for the contracts of the others, is not responsible for damages for negligence occurring beyond its terminus. Knott v. Raleigh, etc., R. Co., 98 N. C. 73, 3 S. E. 735 (1887).

But where two or more common carriers unite in forming an association creating a through line for the transportation of freight, payment of tariff charges to be made at the beginning or end of the transportation, with through bills of lading, the freight charges to be divided according to the respective mileage of the companies, they become a copartnership and each line is liable for any damage resulting from delay or otherwise on any part of the through line, notwithstanding a provision in the bill of lading that each company shall be liable only for loss or damage occurring on its own line. Rocky Mount Mills v. Wilmington, etc., R. Co., 119 N. C. 693, 25 S. E. 854 (1896).

Interstate Shipments.—The entire regulation of interstate commerce is under federal control, and the penalty provided for by subsection (c) of this section for failure of a carrier to pay a claim in the time prescribed does not apply to interstate shipments. See Morphis v. Express Co., 167 N. C. 139, 83 S. E. 1 (1914). The federal laws make the initial carrier liable for damages to a shipment over connecting lines. However, this does not relieve the intermediate or delivering carrier of responsibility for its own negligence, or prevent the State court from requiring the carriers to show which is responsible for the damage. See Aydlett v. Norfolk Sou. R. Co., 172 N. C. 47, 89 S. E. 100 (1916). And notice to damages to the initial carrier of an interstate shipment of goods is sufficient notice to the connecting carrier. Gilikin v. Norfolk Southern R. Co., 174 N. C. 137, 93 S. E. 469 (1917).

Effect of Court Order Relieving Initial Carrier.—While the initial carrier may also be held liable for damages to a shipment made over connecting lines, a direction of the court relieving it from liability does not necessarily relieve the carrier whose negligence caused the damages. Gilikin v. Railroad, 174 N. C. 137, 93 S. E. 469 (1917).

III. CLAIM AGAINST CARRIERS.

Filing of Claim Prerequisite to Penalty.—A consignor of a shipment of goods is required by subsection (b) of this section to file his claim with the agent of the common carrier at the point of its origin, and this he must have done to maintain his action against the carrier for the penalty prescribed for its failure to settle for its loss, or damage thereto, within ninety days, etc. Hamlet Grocery Co. v. Southern R. Co., 170 N. C. 241, 87 S. E. 57 (1915).

In order to recover the penalty, the consignee must file his claim with the agent as the statute directs, and the filing thereof with another of the carrier's agents is insufficient. Eagles Co. v. East Carolina Ry., 184 N. C. 66, 113 S. E. 512 (1922).

Carrier May Regulate Time of Filing.—A stipulation in a bill of lading denying the carrier's liability for damages unless written notice of such claim be filed within a specified period is in derogation of the common law, and while it will be upheld if reasonable, the burden of proof is on the carrier to show that it is. Phillips v. Seaboard Air Line R. Co., 172 N. C. 86, 89 S. E. 1057 (1916).

A stipulation that claims must be filed in four months is reasonable. Culbreth v. Atlantic Coast Line R. Co., 169 N. C. 723, 86 S. E. 624 (1915). An allowance of sixty days is reasonable, but an allowance of thirty days is unreasonable. Gwyn Harper Mfg. Co. v. Carolina Central R., 128 N. C. 280, 38 S. E. 894 (1901).

Filing Claim by Mail. — The essential things for the proper filing of the claim against the common carrier for damages, and for the penalty under the provisions of this section, being its delivery to and acceptance by the carrier's designated agent, such filing is not restricted to its manual delivery, but the same may be done through the agency of the United States mail. The delivery of the mail will be presumed. Eagles Co. v. East Carolina Railway, 184 N. C. 66, 113 S. E. 512 (1922).

Omission of Amount of Loss. — It is not required that a claimant state the amount of his loss in his claim for damages against a carrier. McRary v. Southern Ry. Co., 174 N. C. 563, 94 S. E. 107 (1917).

Necessity of Written Demand.—A penal statute is to be strictly construed, and the provisions of subsections (b) and (c) of this section are not complied with when oral demand is made, as such cannot be filed under the ordinary acceptance of the word and does not afford the carrier the protection that a written demand would give. Thompson v. Southern Express Co., 147 N. C. 343, 61 S. E. 182 (1908). But failure to file a formal written demand is no bar to a recovery from the carrier of actual damages sustained. Hinkle v. Southern Ry. Co., 126 N. C. 932, 36 S. E. 348 (1900); Kime v. Sou. R. Co., 153 N. C. 398, 69 S. E. 264 (1910).

Stipulations May Be Waived.—The stipulation in a livestock bill of lading requiring that notice in writing be given the carrier's agent at destination, of claim for damages to the animals shipped, before they are removed or mingled with other animals, may be waived by the carrier's agent at the delivering point. Newborn v. Louisville, etc., R. Co., 170 N. C. 205, 87 S. E. 37 (1915).

Connecting Carriers.—Where the second carrier in the connected line of shipment causes damages to the shipment by improperly loading it, it may not defeat an action to recover such damages, when the required notice within four months has been filed with and accepted without comment by it, on the ground that such notice had not been filed with the initial or final carrier under the terms of the contract of carriage. The doctrine of notice to the agent is applicable here. Aydlett v. Norfolk Southern R. Co., 172 N. C. 47, 89 S. E. 1000 (1916).

Interstate Shipments.—The federal statutes, while recognizing the right of the carrier to stipulate for the filing of claims within a reasonable period, provide that if the loss or damage is due to a delay in transit by negligence no notice shall be required as a condition precedent to recovery. Mann v. Transportation Co., 176 N. C. 104, 96 S. E. 731 (1918).

IV. ACTIONS.

Who May Bring Action. — Ordinarily the title to a shipment of goods by common carrier passes to the consignee upon their acceptance by the carrier, and he may sue for damages thereto in transit; but when it is shown that the consignee refused to accept the damaged goods, and that the sale has been cancelled by consent, the consignor may maintain his action against the carrier for damages. Aydlett v. Norfolk Southern R. Co., 172 N. C. 47, 89 S. E. 1000 (1916).

Joinder of Causes of Action.—A recovery of the value of a shipment of goods and the penalties for the refusal of the carrier to deliver and for the failure to settle the claim within the statutory period, may be united in the same action. Jeans v. Seaboard Air Line R. Co., 164 N. C. 224, 80 S E. 242 (1913).

Same—Issues Separate and Distinct.—In an action against a railroad company to recover damages to a shipment of goods and the penalty for the failure of defendant to pay the same within ninety days, as allowed by subsection (c) of this section, the issues raised are entirely separate and distinct from each other, and the trial judge may set aside the verdict on the second issue, and retain that on the first one, for a retrial. Hussey v. Atlantic Coast Line R. Co., 183 N. C. 7, 110 S. E. 599 (1922).

As to venue of action against railroad, see § 1-81.

Prima Facie Case.—In an action against the carrier for damages for the destruction of a shipment of freight by fire, a prima facie case is made out when the plaintiff shows the receipt of the freight for transportation and its nondelivery. Everett v. Norfolk, etc., R. Co., 138 N. C. 68, 50 S. E. 557 (1905); Osborne v. Southern Ry. Co., 175 N. C. 594, 96 S. E. 34 (1918).

Same—Limited Liability. — In cases of limited liability, proof of shipment and loss or injury makes a prima facie case for the shipper, and then the burden is upon the carrier to show that the circumstances of the loss bring it within the excepted causes, and when this is shown, the burden still rests upon the carrier of showing that the loss or injury was not due to its own negligence. Mitchell v. Carolina Cent. R. Co., 124 N. C. 236, 32 S. E. 671 (1899).

Plaintiff Must Prove Failure to Settle. —The burden is on plaintiff to show that the common carrier has failed to settle his claim in ninety days, etc., after written demand under the provisions of subsections (b) and (c) of this section, applying to intrastate shipments, and the prima facie case made out by showing the unreasonable delay in the delivery of the shipment is not sufficient. Watkins v. American Ry. Express Co., 190 N. C. 605, 130 S. E. 305 (1925).

Recovery Must Equal Claim.—In order to recover the penalty for failure to settle a claim for damages within ninety days, etc., the burden is on plaintiff to show that the amount of his recovery be at least equal to the amount of his written demand. Watkins v. American Railway Express Co., 190 N. C. 605, 130 S. E. 305 (1925).

Settlement after Penalty Accrues.—The proviso that consignee must first recover the full amount claimed is only to protect the carrier against excessive demands and not to discourage settlements for losses, and the plaintiff's right to recover the penalty in such suits is not lost by accepting settlement for damages for full amount claimed after the penalty had accrued. Rabon v. Atlantic Coast Line R., 149 N. C. 59, 62 S. E. 743 (1908).

Measure of Damages for Delay.—In the trial of an action against a railroad company for loss occasioned by its delay in transporting machinery shipped over its line by plaintiff which was engaged in equipping a cotton factory, where it appeared that workmen employed by the plaintiff were forced to remain idle, though under pay of plaintiff, the measure of plaintiff's damages was the interest on the unemployed capital, the wages paid to workmen and such other costs and expenses incurred by plaintiff in consequence of the delay. Rocky Mount Mills v. Wilmington, etc., R. Co., 119 N. C. 693, 25 S. E. 854 (1896).

§ 62-204. Notice of claims, statute of limitations for loss, damage or injury to property.—Any claim for loss, damage or injury to property while in the possession of a common carrier shall be filed by the claimant with the carrier in writing within nine (9) months after the same occurred, and the cause of action with respect thereto shall be deemed to have accrued at the expiration of thirty (30) days after the date of such notice, and action for the recovery thereon may be commenced immediately thereafter or at any time within two (2) years after notice in writing shall have been given to the claimant by the adverse party that the claim or any part thereof specified in such notice has been disallowed, and neither party shall by rule, regulation, contract, or otherwise, provide for a shorter time for filing such claims or for commencing actions thereon than the period set out in this section. Provided, however, that this section shall not apply to motor carriers of passengers. (1947, c. 1008, s. 21; 1963, c. 1165, s. 1.)

§ 62-205. Joinder of causes of action.—To expedite the settlement of claims between shippers and common carriers, a shipper may join in the same complaint against a common carrier any number of claims for overcharges, or a common carrier may join in the same complaint any number of claims against a shipper for undercharges, whether such claims arose at the same time or in the course of shipments at different times; provided, that each such claim shall be so identified that the same and the allegations with respect thereto may be distinguished from other claims so joined in the complaint, and in cases in which the right of subrogation may be invoked the judgment shall specify the amount of recovery, if any, on each such claim. For the purpose of jurisdiction under this section the aggregate amount set out in the complaint shall be deemed the sum in controversy. Provided, however, that this section shall not apply to motor carriers of passengers. (1947, c. 1008, s. 20; 1963, c. 1165, s. 1.)

§ **62-206. Carrier's right against prior carrier.**—Any common carrier shall have all the rights and remedies herein provided for against a common carrier from which it received the freight in question. Provided, however, that this section shall not apply to motor carriers of passengers. (1905, c. 330, s. 3; Rev., s. 2636; C. S., s. 3526; 1963, c. 1165, s. 1.)

Cross Reference.—As to power of Utilities Commission to act as arbitrator in disputes between carriers, see § 62-40.

§ **62-207. Regulation of demurrage.**—(a) The Commission shall make rules and fix, establish or allow rates governing demurrage and storage charges by common carriers and shall make rules governing railroad companies in the placing of cars for loading and unloading.

(b) No common carrier doing business in the State shall make any charge on account of demurrage while a car or other equipment, whether the same be refrigerated or not, is being loaded for shipment, until such car or such other equipment has remained at the place of loading for a period of time in excess of that approved by the Commission as free time for such car or such other equipment.

(c) This section shall not apply to motor carriers of passengers. (1903, c. 342; Rev., s. 1100; Ex. Sess. 1913, c. 55; C. S., ss. 1057, 3527; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-208. Common carriers to settle promptly for cash-on-delivery shipments; penalty.**—Every common carrier which shall fail to make settlement with the consignor of a cash-on-delivery shipment, either by payment of the moneys stipulated to be collected upon the delivery of the articles so shipped or by the return to such consignor of the article so shipped, within twenty (20) days after demand made by the consignor and payment or tender of payment by him of the lawful charges for transportation, shall forfeit and pay to such consignor a penalty of twenty-five dollars ($25.00), where the value of the shipment is twenty-five dollars ($25.00) or less; and, where the value of the shipment is over twenty-five dollars ($25.00), a penalty equal to the value of the shipment; the penalty not to exceed fifty dollars ($50.00) in any case: Provided, no penalty shall be collectible where the shipment, through no act of negligence of the common carrier is burned, stolen or otherwise destroyed: Provided further, that the penalties here named shall be cumulative and shall not be in derogation of any right the consignor may have under any other provision of law to recover of the common carrier damages for the loss of any cash-on-delivery shipment or for negligent delay in handling the same. Provided, however, that this section shall not apply to motor carriers of passengers. (1909, c. 866; C. S., s. 3530; 1963, c. 1165, s. 1.)

§ **62-209. Sale of unclaimed baggage or freight; notice; sale of rejected property; escheat.**—(a) Any common carrier which has had in its possession on hand at any destination in this State any article whether baggage or freight, for a period of sixty (60) days from its arrival at destination, which said carrier cannot deliver because unclaimed, may at the expiration of said sixty (60) days sell the same at public auction at any point where in the opinion of the carrier the best price can be obtained: Provided, however, that notice of such sale shall be mailed to the consignor and consignee, by registered or certified mail, if known to such carrier, not less than fifteen (15) days before such sale shall be made; or if the name and address of the consignor and consignee cannot with reasonable diligence be ascertained by such carrier, notice of the sale shall be published once a week for two consecutive weeks in some newspaper of general circulation published at the point of sale; Provided, that if there is no such paper published at such point, the publication may be made in any paper having a general circulation in the State: Provided further, however, that if the nondelivery of said article is due to the consignee's and consignor's rejection of it, then such article may be sold by the carrier at public or private sale, and at such time and place as will in the carrier's judgment net the best price, and this without further notice to either consignee or consignor, and without the necessity of publication.

(b) Where the article referred to in this section is live freight, or perishable freight, or freight of such low value as would not bring the accrued transportation and other charges if held for sixty (60) days as provided in this section, the common carrier may, with or without advertisement, sell the same in such manner and at such time and place as will in its judgment best protect the interests of the carrier, the consignor and the consignee, and whenever practicable the consignor and consignee shall be notified of the proposed sale of such freight.

(c) The common carrier shall keep a record of the articles sold and of the prices obtained therefor, and shall, after deducting all charges and the expenses of the sale, including advertisement, if advertised, pay the balance to the owner of such articles on demand therefor made at any time within five (5) years from the date of the sale. If no person shall claim the surplus within five (5) years, such surplus shall be paid to the University of North Carolina.

(d) This section shall not apply to motor carriers of passengers. (1871-2, c. 138, s. 50; Code, s. 1987; Rev., s. 2639; 1921, c. 124, ss. 1, 2, 3; C. S., s. 3534; 1963, c. 1165, s. 1.)

Cross Reference.—As to unclaimed personalty escheating to the University of North Carolina, see § 116-23.

Editor's Note. — For decisions under former statute relating to sale of unclaimed freight, see Norfolk Southern R. Co. v. New Bern Iron Works, 172 N. C. 188, 90 S. E. 149 (1916); Holloman v. Southern R. Co., 172 N. C. 372, 90 S. E. 292 (1916).

§ 62-210. Discrimination between connecting lines. — All common carriers subject to the provisions of this chapter shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freight to and from their several lines and those connecting therewith, and shall not discriminate in their rates, routes and charges against such connecting lines, and shall be required to make as close connection as practicable for the convenience of the traveling public. Common carriers shall obey all rules and regulations made by the Commission relating to trackage. Irregular route motor carriers shall interchange traffic only with the approval of the Commission. Provided, however, that this section shall not apply to motor carriers of passengers. (1899, c. 164, s. 21; Rev., s. 1088; C. S., s. 1107; 1933, c. 134, s. 8; 1935, c. 258; 1941, c. 97; 1963, c. 1165, s. 1.)

Editor's Note.—As to the practice of specifying in published tariffs particular routes formed with connecting carriers, see 13 N. C. Law Rev. 364.

Declaratory of Common Law.—A similar section in the act creating the former Railroad Commission was held, in Atlantic Exp. Co. v. Wilmington, etc., R. Co., 111 N. C. 463, 16 S. E. 393 (1892), to be merely declaratory of the common law, and not to enlarge its scope.

Commission May Require Trains to Make Connection.—The Commission has power to require a railroad company to have a train arrive at a certain station on its road at a certain schedule time, so as to connect with the train of another company. Corp. Comm. v. Railroad, 137 N. C. 1, 49 S. E. 191 (1904).

Express Facilities.—A railroad company is not compelled to furnish express facilities to another to conduct an express business over its road the same as it provides for itself or affords to any other express company. Atlantic Exp. Co. v. Wilmington, etc., Railroad, 111 N. C. 463, 16 S. E. 393 (1892).

§ 62-211. Regulating shipment of flammable substances. — The Commission is authorized and empowered to adopt and promulgate rules for the shipment of flammable and explosive articles, cotton which has been partially consumed by fire, and such other like articles as in its opinion may render transportation dangerous. After the promulgation of such rules, no common carrier shall be required to receive or transport any such articles except when tendered in accordance with the said rules; nor shall such common carrier be liable for any penalty for refusal to receive such articles for shipment until all the rules prescribed by the Commission in regard to the shipment of the same shall be complied with. Provided, however, that this section shall not apply to motor carriers of passengers. (1907, c. 471, s. 1; C. S., s. 1056; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

The Commission is particularly authorized to regulate the carriage of inflammable articles as freight. Tilley v. Norfolk, etc., R. Co., 162 N. C. 37, 77 S. E. 994 (1913).

§§ 62-212 to 62-219: Omitted.

ARTICLE 11.

Railroads.

§ 62-220. Powers of railroad corporations.—Every railroad corporation shall have power:

(1) To Survey and Enter on Land.—To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto.

Cross Reference.—As to right of entry on land, see § 40-3.

Conflicting Locations.—As between two railroad companies the first location belongs to that company which first defines and marks its route and adopts the same for its permanent location by authoritative corporate action. Fayetteville Street Ry. v. Aberdeen & R. R. Co., 142 N. C. 423, 55 S. E. 345 (1906).

(2) To Condemn Land under Eminent Domain.—To appropriate land and rights therein by condemnation, as provided in the chapter Eminent Domain.

Cross References.—As to condemnation by right of eminent domain, see § 40-2 et seq. As to amount of land which may be condemned, see § 40-29.

Editor's Note.—Since railroads are quasi-public corporations they are given by the State the power to take, by proper proceedings the necessary lands upon which to build their roads. Nor will the courts enjoin a railroad corporation from condemning land for a public purpose on the ground that the corporation was irregularly organized. In Powers v. Hazelton, etc., R. Co., 33 Ohio St. 429 (1878), it was held that a landowner could not be permitted to prove, as a defense to condemnation proceedings instituted by a regularly organized railroad corporation, that the company was incorporated not for a public use, but for the private purposes of the corporators only, and that there was no public necessity for the road. See Wellington, etc., R. Co. v. Cashie, etc., R. Co., 114 N. C. 690, 19 S. E. 646 (1894).

Land May Be Taken from Another Railroad.—Land acquired by one railroad company under a legislative grant of the right of eminent domain, and not necessary for the exercise of its franchise or the discharge of its duties, is liable to be taken under the law of eminent domain for the use of another railroad company. North Carolina, etc., R. Co. v. Carolina, etc., R. Co., 83 N. C. 489 (1880).

(3) To Take Property by Grant.—To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; but

the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

Editor's Note.—Railroads can acquire real estate only by statutory authority. In 1 Elliott on Rys., sec. 390, the general principle is stated as follows: "The rule is well established that a railroad corporation cannot acquire and hold lands for any purposes except such as are authorized by statute. The authority must be conferred by legislation or it does not exist. It is, however, not necessary that the authority should be expressly conferred. It may be implied." See Wallace v. Moore, 178 N. C. 114, 100 S. E. 237 (1919).

Extending User of Right of Way.—While a railroad can use only the part of its right of way actually occupied, whenever the necessities of the company require it, it can extend its user of the right of way to the extent of the statutory right for additional tracks or other railroad purposes. R. R. v. Olive, 142 N. C. 257, 264, 55 S. E. 263 (1906); Atlantic, etc., R. Co. v. Bunting, 168 N. C. 579, 84 S. E. 1009 (1915); Tighe v. Seaboard Air Line R. Co., 176 N. C. 239, 97 S. E. 164 (1918).

(4) To Purchase and Hold Property.—To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad, the stations and other accommodations necessary to accomplish the object of its incorporation.

Cross References.—As to adverse possession of property owned by a railroad, see § 1-44. As to presumption of abandonment of railroad right of way, see § 1-44.1.

A conveyance of land for use as a railroad right of way by deed in regular form of bargain and sale, reciting a valuable consideration, is presumptively a deed of purchase within the meaning of this section and must be interpreted as an ordinary deed, so that when the granting clause is sufficient in form to convey the fee simple and the habendum and warranties are in harmony therewith, it conveys the fee and not a mere easement. McCoster v. Barnes, 247 N. C. 480, 101 S. E. (2d) 330 (1958).

(5) To Grade and Construct Road.—To lay out its road, not exceeding one hundred feet in width, and to construct the same; to take, for the purpose of cuttings and embankments, as much more land as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in the chapter Eminent Domain.

Cross Reference.—See § 40-29.

Change of Grade.—A railroad company has a right to change the grade of its roadbed or to remove it to any point on its right of way. Brinkley v. Southern R. Co., 135 N. C. 654, 47 S. E. 791 (1904).

(6) To Intersect with Highways and Waterways.—To construct its road across, along or upon any stream, watercourse, street, highway, turnpike, railroad or canal which the route of its road shall intersect or touch; but the company shall restore the stream, watercourse, street, highway or turnpike, thus intersected or touched, to its former state or to such state as not unnecessarily to impair its usefulness. Nothing in this chapter shall be construed to authorize the erection of any bridge or any other construction across, in or over any stream or lake navigated by motor boats commensurate in size to sailboat, or sailboats or vessels, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon or across any streets in any municipality without the assent of such municipality.

Cross References.—As to the power of the Utilities Commission to regulate crossings, see § 62-237. As to the duty of railroads to construct and maintain bridges which it has necessitated building, see §§ 136-75 and 136-78; as to duty to provide cattle guards, see § 62-226.

Editor's Note.—For note on misuse of railroad right of way, see 29 N. C. Law Rev. 312.

Duty to Public.—While railroad corporations are given the right and power to construct their roads across streets, highways, etc., they must maintain a safe and convenient crossing there, making it, as far as they can, as safe and convenient to the public as it would have been had the railroad not been built. Raper v. Wilmington, etc., R. Co., 126 N. C. 563, 36 S. E. 115 (1900).

Duty When Railroad Changes Grade of Street. — Where a railroad accepts the benefits or statutory authorization and changes the grade of a street or highway it must assume and comply with the burden imposed and restore the street to a useful condition. If, to meet the burden so imposed, it becomes necessary to go beyond the railroad right of way and change the grade of a street, thereby impairing access of an abutting property owner, compensation must be paid for the diminution in value resulting from the denial of access. Thompson v. Seaboard Air Line R. Co., 248 N. C. 577, 104 S. E. (2d) 181 (1958).

Whole Street Cannot Be Appropriated.—In Seaboard Air Line R. Co. v. Raleigh, 219 F. 573, 581 (1914), it is said: "It is doubtful whether the language of the section can be construed to authorize the exclusive appropriation of the street. The sidewalk is a portion of the street appropriated to the use af pedestrians. To construe the grant of the right to construct its road 'across, along, or upon' a street, always of much greater width than a railroad track and the crossties, as a grant of the right to occupy the entire street or sidewalk, is not permissible in the light of the recognized rule of construction of such grants of power."

Assent of City an Essential Power.—The assent to the use of the street by a railroad company is often a most essential power, necessary to be used for the benefit of the people of the city. Griffin v. Southern R. Co., 150 N. C. 312, 64 S. E. 16 (1909).

When Court Cannot Review Grant.—The action of the board of aldermen in authorizing a railroad company to use a certain street for legitimate railroad purposes, the laying and use of tracks, etc., when the statutory power is given, is not reviewable by the courts at the instance of an owner of land on the street, claiming that some other street should have been so used. Griffin v. Southern R. Co., 150 N. C. 312, 64 S. E. 16 (1909).

(7) To Intersect with Other Railroads. — To cross, intersect, join and unite its railroad with any other railroad at any point on its route and upon the grounds of such other railroad, with the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connections. Every company whose railroad is or shall be hereafter intersected by any other railroad shall unite with the owners of such other railroad in forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by the Commission.

Cross Reference.—As to appointment of commissioners, see § 40-11 et seq.

Railroad Decides Necessity of Intersection.—Where a railroad company has a right to condemn a way across the track of another company to manufacturing plants for a spur track to which the other company also has its siding, in competition for freight, the question whether it is necessary for the plaintiff company to build its spur is one in its discretion; and controversies as to whether the defendant could and would shift the plaintiff's cars on its own track advantageously to the plaintiff, and for a reasonable charge, are immaterial. Virginia, etc., R. Co. v. Seaboard Air Line R. Co., 161 N. C. 531, 78 S. E. 68 (1913).

No Restriction of Right Except Voluntary. — A railroad company having the power of condemnation across the road of another company should exercise this right with regard to the convenience of both parties and with as little interference with the use of the other party of its own track as can be obtained without a great increase in its cost and inconvenience. But the courts cannot restrict this right to be exercised by a railroad to cases in which the courts may approve its reasonableness or expediency. Virginia, etc., R. Co. v. Seaboard Air Line R. Co., 165 N. C. 425, 81 S. E. 617 (1914).

Agreement or Condemnation Necessary for Entry.—Under this section one road cannot enter on the right of way of another for the purpose of connecting therewith without previous agreement, or condemnation proceedings. Richmond, etc., R.

Co. v. Durham, etc., Ry. Co., 104 N. C. 658, 10 S. E. 659 (1889).

Parol Agreement Ineffectual.—A parol agreement to allow one railroad company to extend its track on the right of way of another, for the purpose of connecting therewith, is a mere license, revocable at the will of the licensor, and will not operate as an estoppel although the licensee has entered and made valuable improvements. Richmond, etc., R. Co. v. Durham, etc., Ry. Co., 104 N. C. 658, 10 S. E. 659 (1889).

One railroad company will not be allowed to preclude competition by another in a particular area by arbitrarily refusing such other railroad reasonable use of its right of way and trackage. Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co., 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Use of Common Trackage.—The right of each of two railroads to equal use of common trackage does not mean identical use, and where one of them constructs a spur from its independent line to serve a certain area adjacent to such line, but the common trackage is used by it in its operation serving such spur, the other has the right to construct and use a spur from the common trackage when this is the sole feasible means it has to serve industries in the same area, provided such operations will not impair the use of the common trackage by the other. Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co., 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Railroad companies forming corporation to provide common trackage held entitled to equal use of such trackage. Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co., 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Turnouts, Sidings and Switches.—In the absence of express statutory or charter authorization, the power to construct a railroad includes authority to construct such spur, industrial, switching and other auxiliary tracks as may be necessary to serve the public needs along or near the main line. Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co., 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Railroads have authority under this section to provide "turnouts, sidings, and switches" to serve industrial plants along or near their main lines. Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co., 240 N. C. 495, 82 S. E. (2d) 771 (1954).

(8) To Transport Persons and Property.—To take and convey persons and property on its railroad or by water by the power or force of steam, electricity, or by any other power, and to receive compensation therefor.

Cross References.—As to railroad's duty to transport, see § 62-234. As to power of Utilities Commission to prevent discrimination in service and charges, see § 62-140.

Charter May Confer Right to Lease.—The charter of a railroad company conferring the right to transport passengers and freight, and giving the power to "farm out" the right of transportation, authorizes the company to execute a valid lease of its property and franchises to another railroad company. Hill v. Atlantic, etc., R. Co., 143 N. C. 539, 55 S. E. 854 (1906).

(9) To Erect Stations and Other Buildings.—To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

Cross Reference.—As to power of railroad companies to condemn land for union depots, see § 40-4.

(10) To Borrow Money, Issue Bonds and Execute Mortgages. — From time to time to borrow such sums of money as may be necessary for completing and finishing or operating its railroad, to issue and dispose of its bonds for any amount so borrowed, to mortgage its corporate property and franchises and to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such company at any time under such regulations as the directors may see fit to adopt.

Cross Reference.—As to control of Utilities Commission over pledge of assets, issuing securities, etc., see § 62-160 et seq.

Corporation Has Power to Issue Bonds.—A railroad corporation has power to contract debts, and every corporation possessing such power must also have power to acknowledge its indebtedness under its corporate seal, i. e., to make and issue its bonds. Commissioners v. Atlantic, etc., R. Co., 77 N. C. 289 (1877).

(11) To Lease Rails.—To lease iron rails to any person for such time and upon such terms as may be agreed on by the contracting parties, and upon the termination of the lease by expiration, forfeiture or surrender, to take possession of and remove the rails so leased as if they had never been laid.

(12) To Establish Hotels and Eating Houses. — To purchase, lease, hold, operate or maintain eating houses, hotels and restaurants for the accommodation of the traveling public along the line of its road. (1871-2, c. 138, s. 29; Code, s. 1957; 1887, c. 341; 1889, c. 518; Rev., ss. 2567, 2575; C. S., s. 3444; 1953, c. 675, ss. 6, 7; 1963, c. 1165, s. 1.)

§ 62-221. Engaging in unauthorized business.—(a) It shall be unlawful for any railroad company incorporated under the laws of this State, or any railroad company incorporated under the laws of any other state and operating one or more railroads in this State, to engage in any business other than the business authorized by its or their charter.

(b) Any railroad company violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in the discretion of the court. (Ex. Sess. 1924, c. 80; 1963, c. 1165, s. 1.)

§ 62-222. Agreements for through freight and travel.—The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads and the rolling stock of such corporations or companies on such terms as may be agreed upon by them. (1866-7, c. 105; Code, s. 1995; Rev., s. 2640; C. S., s. 3447; 1963, c. 1165, s. 1.)

§ 62-223. Intersection with highways.—Whenever the track of a railroad shall cross a highway or turnpike, such highway or turnpike may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway or turnpike desirable, then the railroad company may take such additional lands for the construction of the road, highway or turnpike on such new line as may be deemed requisite. Unless the land so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in the chapter Eminent Domain, and duly made by such corporation to the owners and persons interested in such land. The same when so taken shall become a part of such intersecting highway or turnpike in such manner and by such tenure as the adjacent parts of the same highway or turnpike may be held for highway purposes. (1871-2, c. 138, s. 26; Code, s. 1954; Rev., s. 2568; C. S., s. 3448; 1963, c. 1165, s. 1.)

Cross References.—See § 62-220, subdivision (6), and § 62-224. As to the power of Utilities Commission to regulate crossings, see § 62-237. As to ascertaining the compensation for land taken, see § 40-11 et seq.

§ 62-224. Obstructing highways; defective crossings; notice; failure to repair after notice misdemeanor.—(a) Whenever, in their construction, the works of any railroad corporation shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same. If any railroad corporation shall so construct its crossings with public streets, thoroughfares or highways, or keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or endanger the passage or transportation of persons or property along, over or across the same, the governing body of the county, city or town, or other public road authority having charge, control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in writing, directing it to place any such crossing in good condition, so that persons may cross and property be safely transported across the same.

(b) The notice may be served upon the agent of the offending railroad located nearest to the defective or dangerous crossing about which the notice is given, or it may be served upon the section master whose section includes such crossing. Such notice may be served by delivering a copy to such agent or section master, or by registered or certified mail addressed to either of such persons.

(c) If the railroad corporation shall fail to put such crossing in a safe condition for the passage of persons and property within thirty (30) days from and after the service of the notice, it shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Each calendar month which shall elapse after the giving of the notice and before the placing of such crossing in repair shall be a separate offense.

(d) This section shall in nowise be construed to abrogate, repeal or otherwise affect any existing law now applicable to railroad corporations with respect to highway and street crossings; but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law. (R. C., c. 61, s. 30; 1874-5, c. 83; Code, s. 1710; Rev., s. 2569; 1915, c. 250, ss. 1, 2; C. S., ss. 3449, 3450; 1963, c. 1165, s. 1.)

Cross References.—As to the power of Utilities Commission to regulate crossings, see § 62-237. As to duty of railroad to maintain bridges, see § 136-75. As to duty of railroad to provide drawbridge, see § 136-78. As to venue in action against railroad, see § 1-81.

Duty to Maintain Safe and Convenient Crossing.—While railroad corporations are given the right and power to construct their roads across streets, highways, etc., they must maintain a safe and convenient crossing there, making it, as far as they can, as safe and convenient to the public as it would have been had the railroad not been built. Raper v. Wilmington, etc., R. Co., 126 N. C. 563, 36 S. E. 115 (1900).

Duty Not Restricted to Public Highway.—This section does not restrict the railroad's duty to crossings of "public highways," but uses the broader and generic term "highways," which might include any road used by the public as a mill and church road and in going to town. Goforth v. Southern R. Co., 144 N. C. 569, 57 S. E. 209 (1907).

Same—Applies to Private Crossings.—An "established road or way" which a railroad company may not obstruct in crossing it with its tracks extends to those whose use is of a private nature, and not necessarily those dedicated to a public use, and in such instances, where the rights of a railroad and the rights of the public to the use of their roads or ways conflict, the former must give place to the latter. Tate v. Seaboard Air Line R. Co., 168 N. C. 523, 84 S. E. 808 (1915).

Duty When Railroad Changes Grade of Street. — Where a railroad accepts the benefits of statutory authorization and changes the grade of a street or highway it must assume and comply with the burden imposed and restore the street to a useful condition. If, to meet the burden so imposed, it becomes necessary to go beyond the railroad right of way and change the grade of a street, thereby impairing access of an abutting property owner, compensation must be paid for the diminution in value resulting from the denial of access. Thompson v. Seaboard Air Line R. Co., 248 N. C. 577, 104 S. E. (2d) 181 (1958).

"Negligent Construction" Defined.—By "negligent construction" is meant such an improper construction of the crossing, whether arising from negligence, indifference, or motives of economy, as unnecessarily increases the danger of using the public highway. Raper v. Wilmington, etc., R. Co., 126 N. C. 563, 36 S. E. 115 (1900). But the mere fact that a crossing is dangerous does not necessarily impute negligence to the railroad company. Edwards v. Atlantic Coast Line R. Co., 129 N. C. 78, 39 S. E. 730 (1901).

Right to Assume That Crossing Is Safe.—One has the right to assume that a railroad company has discharged its duty to the public by keeping the crossing in safe condition. Tankard v. Roanoke R., etc., Co., 117 N. C. 558, 23 S. E. 46 (1895).

Indictment.—An indictment charging a railroad company with obstructing a public road by the use of plank at a crossing is fatally defective if it does not charge the manner of the misuse of the plank. State v. Roanoke R. etc., Co., 109 N. C. 860, 13 S. E. 719 (1891).

It is a fatal variance in an indictment for obstructing a highway at a railroad crossing, to prove that the defendant permitted for some time a dangerous hole to remain in the crossing. State v. Roanoke R., etc., Co., 109 N. C. 860, 13 S. E. 719 (1891).

When Injury Might Have Been Caused by Defective Crossing.—It is error for the trial court to sustain a motion of nonsuit on competent evidence from which the jury could have found that if defendant's crossing over a neighborhood road had not been negligently left in a dangerous condition, plaintiff would not have been injured by the slipping and falling thereon of the mule upon which he was riding. Goforth v. Southern R. Co., 144 N. C. 569, 57 S. E. 209 (1907).

Applied in Bundy v. Powell, 229 N. C. 707, 51 S. E. (2d) 307 (1949).

§ 62-225. Joint construction of railroads having same location. — Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement provide for the construction of so much of said line as is common to both of them, by one of the companies, and for the manner and terms upon which the business thereon shall be performed. (1871-2, c. 138, s. 46; Code, s. 1983; Rev., s. 2602; C. S., s. 3473; 1963, c. 1165, s. 1.)

§ 62-226. Cattle guards and private crossings; failure to erect and maintain misdemeanor. — Every company owning, operating or constructing any railroad passing through and over the enclosed land of any person shall, at its own expense, construct and constantly maintain, in good and safe condition, good and sufficient cattle guards at the points of entrance upon and exit from such enclosed land and shall also make and keep in constant repair crossings to any private road thereupon. Every railroad corporation which shall fail to erect and constantly maintain the cattle guards and crossings provided for by this section shall be liable to an action for damages to any party aggrieved, and shall be guilty of a misdemeanor and fined in the discretion of the court. Any cattle guard approved by the Commission shall be deemed a good and sufficient guard under this section. (1883, c. 394, ss. 1, 2, 3; Code, s. 1975; Rev., ss. 2601, 3753; 1915, c. 127; C. S., s. 3454; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

Applies to Town Lot.—The statute requiring railroads to construct cattle guards at the point of entrance upon and exit from enclosed lands, applies to a town lot as well as in the county. Shepard v. Suffolk & C. R. Co., 140 N. C. 391, 53 S. E. 137 (1906).

Adoption of Stock Law.—The adoption of the stock law did not abrogate this section in a locality. Shepard v. Suffolk & C. R. Co., 140 N. C. 391, 53 S. E. 137 (1906).

Joinder of Actions. — Where plaintiff's complaint contained two causes of action, one to recover damages alleged to have been caused by defendant's ponding water back on plaintiff's land; the other to recover damages for a breach of duty on the part of defendant in not putting up sufficient cattle guards as required by this section, this was an improper joinder of causes of action, the first being for injury to property, a tort, while the second arose "upon contract" for the breach of an implied contract to perform a statutory duty. Hodges v. Wilmington, etc., R. Co., 105 N. C. 170, 10 S. E. 917 (1890).

§ 62-227. Change of route of railroad.—The directors of any railroad corporation may by a vote of two thirds of their whole number at any time alter or change the route, or any part of the route, of their road, if it shall appear to them that the line can be improved thereby, and they shall have the same right and power to acquire title to any lands required for the purpose of the company in such altered or changed route, as if the road had been located there in the first instance; but no such alteration shall be made in any city or town after the road shall have been constructed, unless the same is sanctioned by a vote of two thirds of the corporate authorities of such city or town. In case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. When any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds or material contributed to the construction of the roadbed or its superstructure by those so interested by their contributions in the abandoned route or line. All the provisions of this chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route. (1871-2, c. 138, s. 25; Code, s. 1953; 1889, c. 391; 1893, c. 396, s. 3; Rev., s. 2573; C. S., s. 3455; 1963, c. 1165, s. 1.)

Authority Necessary to Change Route.—While a railroad company has no power to change its route without legislative authority, it is not necessary that this power should be given in the charter or a direct amendment thereto, but it may be given by charter or by special enactment or by the general railroad laws of the State. Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292 (1906).

Original Rights May Be Retained.—Variations in a route over which a railroad may run do not affect the identity of a corporate body that builds it, where subsequent acts are amendatory of the original charter and give permission for a deflection from the line first projected; and the right to exemption of property from tax granted in the original charter is retained unimpaired. Cheraw, etc., R. Co. v. Commissioners, 88 N. C. 519 (1883).

When Commission Orders Change.—This section, requiring that a contemplated change in the route of a railroad in a city can only be made when sanctioned by a two-thirds vote of the aldermen, only applies where the railroad of its own volition, and for its own convenience, contemplates a change of route, and not to a case where the Corporation Commission (now Utilities Commission), acting under express legislative authority and direction, requires the railroad to make the change for the convenience of the general public. Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292 (1906).

Right to Change Grade.—A railroad company has a right to change the grade of its roadbed or to remove it to any point on its right of way. Brinkley v. Southern R. Co., 135 N. C. 654, 47 S. E. 791 (1904).

§ 62-228. Obtaining temporary track across railroad.—Whenever any railroad line, track and right of way shall lie between any body of merchantable timber, quarry or other kind or class of heavy property requiring machinery for transportation and any body of navigable water over which such property could be floated or shipped, and the owner of such timber or property shall desire to transport such property to water for purposes of floating or shipping, such property owner shall have the right to file petition before the Commission for a right to cross such railroad with any other railroad track or tramway. The procedure for the hearing of the petition shall be the same as other proceedings of the Commission. The Commission shall hear the facts and if it be found reasonably necessary that the railroad track and right of way shall be crossed by a temporary railroad track, the Commission shall so order and prescribe the payment of the expense and the cost. (1931, c. 448; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-229. Shelter at division points required; failure to provide a misdemeanor.—(a) It shall be the duty of every person that may now or hereafter own, control, or operate any line of railroad in this State, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleets, hot sunshine, and other inclement weather:

Provided, the Commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

(b) Any person failing to comply with the requirements of this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Each day of such failure shall constitute a separate offense. (1913, cc. 65, 117; C. S., s. 6557; 1933, c. 134; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-230. Maximum working hours and continuous service of employees; penalty; Commission to enforce.—(a) It shall be unlawful for any railroad company, its officers or agents, subject to this article, to require or permit any employee, subject to this article, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such railroad company shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period or not exceeding three (3) days in any week: Provided further, the Commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

(b) Any such railroad company, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of this section shall be liable to a penalty of not to exceed five hundred dollars ($500.00) for each and every violation, to be recovered in suit or suits to be brought in the name of the State of North Carolina on relation of the Commission in the Superior Court of Wake County or of the county in which the violation of this article occurred; and it shall be the duty of the said Commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one (1) year from date of such violation; and it shall be the duty of said Commission to lodge with the proper solicitors information of any such violations as may come to its knowledge. In all prosecutions under this article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this article shall not apply to any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this article shall not apply to the crews of wrecking or relief trains.

(c) It shall be the duty of the Commission to execute and enforce the provisions of this article, and all powers granted to the Commission are extended to it in the execution thereof. (1911, c. 112, ss. 2, 3, 4; C. S., ss. 6565, 6566, 6567; 1933, c. 134; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-231. Union depots required under certain conditions. — The Commission is empowered and directed to require, when practicable, and when the necessities of the case, in its judgment, require, any two or more railroads which now or hereafter may enter any city or town to have one common or union passenger depot for the security, accommodation and convenience of the traveling public, and to unite in the joint undertaking and expense of erecting, constructing and maintaining such union passenger depot, commensurate with the business and revenue of such railroad companies or corporations, on such terms, regulations, provisions and conditions as the Commission shall prescribe. The railroads so ordered to construct a union depot shall have power to condemn land for such purpose, as in case of locating and constructing a line of railroad: Provided, that nothing in this section shall be construed to authorize the Commission to require the construction of such union depot should the railroad companies at the time of application for said order have separate depots, which, in the opinion of the Commission, are adequate and convenient and offer suitable accommodations for the traveling public. (1903, c. 126; Rev., s. 1097; C. S., s. 1042; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to power of railroads to condemn land for union station, see § 40-4.

Liberal Construction.—The statute in its principal purpose may be considered as remedial in its nature, and as to that feature will receive a liberal construction. Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292 (1906).

Section Valid Exercise of Legislative Power.—The power of the legislature to enact a statute of this character has been established by numerous and well-considered decisions, and is no longer open to question. Corporation Comm. v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793 (1905); Corporation Comm. v. Railroad, 140 N. C. 239, 52 S. E. 941 (1905); Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292 (1906).

Powers Given by Necessary Implication.—The statute authorizing the Commission to order union stations to be built and maintained carries with it the power to do what is reasonably necessary to execute such order, including the use of the streets of a town for legitimate railroad purposes, the laying of tracks, etc., necessary to that end. Griffin v. Southern R. Co., 150 N. C. 312, 64 S. E. 16 (1909).

When Union Stations May Be Required.—Under this section the Commission is empowered to direct the establishment of union stations under certain conditions. When these conditions are found to exist, then the two railroads may be compelled to unite in the erecting, constructing, and maintaining such union passenger depot commensurate with the business and revenues of such railroad companies on such terms, regulations, provisions and conditions as the Commission shall prescribe. State v. Seaboard Air Line, etc., R. Co., 161 N. C. 270, 76 S. E. 554 (1912).

The remedy was intended to apply to all the towns and cities in the State where, in the legal discretion of the Commission, the move is practicable, the convenience of the traveling public requires it, and the existing facilities, in the judgment of the Commission, are inadequate. Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292 (1906).

Same—Must Be Practicable.—Whenever the Commission requires and orders a union station to be built, the only restriction in the statute is when "practicable." The other matters as to the security, accommodation, and convenience of the public are simply reasons addressed to the judgment of the Commission. When there is an appeal from its order, the sole query for a jury, under the statute, is whether the execution of the order is "practicable." The finding of the Commission that it is practicable is prima facie correct; and the burden is upon the defendant to show evidence to the contrary. State v. Seaboard Air Line, etc., R. Co., 161 N. C. 270, 76 S. E. 554 (1912).

New Union Station.—The commission has the power to require railroad companies subject to its jurisdiction, which have constructed or maintained a union passenger station in a city or town of the State, to construct or equip a new union passenger station in such city or town upon its finding that the present station is inadequate. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Jurisdiction Original — Exercised upon Own Motion or Petition of Interested Parties.—The jurisdiction of the Commission with respect to the construction of passenger stations is original, and may be exercised either upon its own motion or upon petition of interested parties. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Parties.—The Commission is not without jurisdiction of a proceeding with respect to the erection, construction, and maintenance of a new union passenger station in city or town, because one or more railroad companies entering such city or town are not made parties in the proceeding. The presence of two or more railroad companies as parties is sufficient. Corporation Commission v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Same—Lessor—Appeal. — Where three railroad companies use a union station in a city in connection with the operation of their railroads, two as owners, and the other as lessee of a fourth road, it is not jurisdictional before the Commission or the superior court on appeal that the lessor railroad be a party to the proceedings before the Commission to compel the railroads to build and maintain an adequate station, but it is not error for the trial judge to order that the lessor road be made a party and the cause proceeded with therein. State v. Southern Ry. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Interstate and Intrastate Carriers.—The order of the Commission for the joint erection by an intrastate carrier and an interstate carrier of a union station at a junction cannot be regarded as objectionable so far as it relates to the intrastate carrier, as a burden on interstate commerce, when it appears that the Commission was passing upon the petition of only a few cities or towns in the State separately and not as a part of a State-wide scheme, and the expenditures required were in amount too small to affect such commerce. State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923).

Same—Federal Transportation Act Prospective.—The Federal Transportation Act was held prospective in its enforcement, and did not relate back to a final order of the Commission, not appealed from, for the erection of a union station where the lines of an intrastate and interstate carrier crossed each other, the execution of which had been stayed by the Commission until after the passage of the federal statute solely for the advantage of the carriers at their request. State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923).

§ 62-232. Construction of sidetracks. — The Commission is empowered and directed to require the construction of sidetracks by any railroad company to industries already established or to be established: Provided, it is shown that the proportion of such revenue accruing to such sidetrack is sufficient within five (5) years to pay the expenses of its construction. This shall not be construed to give the Commission authority to require railroad companies to construct sidetracks more than five hundred feet in length. (1899, c. 164, s. 2, subsec. 15; Rev., s. 1097; C. S., s. 1044; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to condemnation of land for industrial siding, see § 40-5.

Purpose of Section.—The General Assembly, while not prohibiting the carrier from continuing to establish sidings at its pleasure, deemed it wise to take the power of refusing to grant or continue such sidings out of the arbitrary will of the common carrier by authorizing the Commission to require the establishment of such sidings in proper cases. Corporation Comm. v. Seaboard Air Line Railroad, 140 N. C. 239, 52 S. E. 941 (1905).

Not Interference with Interstate Commerce.—The establishment of an industrial siding under the authority of the Commission is not an interference with interstate commerce. State v. Southern R. Co., 153 N. C. 559, 69 S. E. 621 (1910); Missouri Pac. R. Co. v. State, 216 U. S. 262, 30 S. Ct. 330, 54 L. Ed. 472 (1910).

Restriction upon Power.—The Commission can require a railroad company to build a sidetrack to an industrial plant only upon the company's right of way or when the right of way is tendered. State v. Southern R. Co., 153 N. C. 559, 69 S. E. 621 (1910).

Restriction as to Revenue.—The power conferred upon the Commission to order a railroad company to build a sidetrack, is with the restriction that the revenue from such sidetrack shall be "sufficient within five years to pay the expenses of construction;" and the lower court having denied the authority of the Commission in this action, the presumption is in favor of its judgment, and it will be affirmed in the absence of evidence tending to show that the revenue will be sufficient according to the terms of the statute. State v. Southern R. Co., 153 N. C. 559, 69 S. E. 621 (1910).

Restriction as to Length.—The section confers upon the Commission the power to establish sidings under certain conditions, and restricts the exercise of such a right to 500 feet in length. Hales v. Atlantic Coast Line R. Co., 172 N. C. 104, 90 S. E. 11 (1916).

Rights of Intervening Owners.—A railroad company, of its own initiative or by virtue of a contract with private persons, can acquire no right to construct and use sidetracks to private industries off their right of way and over the lands of intervening owners against the will of such owners. When they have once permanently located their line, they are, as a rule, restricted to that and the right of way incident to it. Hales v. Atlantic Coast Line R. Co., 172 N. C. 104, 90 S. E. 11 (1916).

Nonresident Railroad without Power of Eminent Domain.—The Commission cannot confer the power of eminent domain, and when the legislature has not conferred such power upon a nonresident railroad company respecting the construction of a sidetrack over the lands of others, an order of the Commission for the railroad to build such a track is void. Butler v. Penn Tobacco Co., 152 N. C. 416, 68 S. E. 12 (1910); State v. Southern R. Co., 153 N. C. 559, 69 S. E. 621 (1910).

§ 62-233. Operation according to public schedule; certain trains and connections may be required.—(a) Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.

(b) The Commission is empowered and directed to require, when practicable and when the necessities of the traveling public, in the judgment of the Commission, demand, that any railroad in this State shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such points: Provided, that no order under this section shall be made unless the business of the railroad justifies it. (1871-2, c. 138, s. 35; Code, s. 1963; Rev., s. 2611; 1907, c. 469, s. 3; C. S., ss. 1045, 3475; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

I. Subsection (a).
II. Subsection (b).

Cross References.

As to powers of Utilities Commission to prevent discrimination in transportation facilities, see § 62-140. As to rate regulation, see § 62-130 et seq. As to ejection of passenger refusing to pay fare or violating rules, see § 60-151.

I. SUBSECTION (a).

Reaffirmance of Common-Law Rule. — The requirement to furnish accommodations within a reasonable time is but a reaffirmance of the common law, leaving the courts to say what time is reasonable. Alsop v. Southern Exp. Co., 104 N. C. 278, 10 S. E. 297 (1889).

Duty to Provide Transportation. — It is the duty of a common carrier to provide sufficient means of transportation for all freight and passengers which its business naturally brings to it, and an unusual occasion by which a greater demand upon it is temporarily made will not relieve it of the obligation if, by the use of reasonable foresight, it could have been provided for. Purcell v. Richmond, etc., R. Co., 108 N. C. 414, 12 S. E. 954 (1891).

Trains Need Not Stop at All Stations.—It is a reasonable regulation of a railroad that certain trains shall not stop at all stations, provided there are enough to serve the purposes of local travel. Hutchinson v. Railroad, 140 N. C. 123, 52 S. E. 263 (1905).

Schedule Is Offer.—The printed schedule of trains is an offer, which is accepted by a person when he asks for a ticket, and he has the right to be transported by the first train stopping at his destination. Coleman v. Southern R. Co., 138 N. C. 351, 50 S. E. 690 (1905).

When Contract of Carriage Begins.—The contract of carriage by a common carrier begins when a passenger comes up on the carrier's premises or conveyance with the purpose of buying a ticket within a reasonable time or after having purchased a ticket; and the relation, once constituted, continues until the journey contracted for is concluded and the passenger has left or has had reasonable time to leave such premises. Hansley v. Jamesville, etc., R. Co., 115 N. C. 602, 20 S. E. 528 (1894).

Carrier May Demand Prepayment of Freight.—A common carrier has a right to demand the prepayment of charges for transportation before receiving freight for shipment to one individual, although it may have an established custom to accept shipments to its other patrons without such prepayment. Allen v. Cape Fear, etc., R. Co., 100 N. C. 397, S. E. 105 (1888).

A common carrier may demand prepayment of freight charges before shipment to any station, and from one shipper, though this is not required of others. It should appear, however, that a plaintiff had notice of such regulation. Randall v. Richmond, etc., R. Co., 108 N. C. 612, 13 S. E. 137 (1891).

Failure to Take Passenger Aboard. — Where plaintiff purchased a ticket from defendant's agent at a regular station before the time advertised for the arrival and departure of its train at that place, and was in readiness to get aboard, but the train ran by, making no effort to stop, although it had room in its cars for plaintiff, plaintiff was entitled to punitive damages, in the absence of sufficient excuse shown by defendant. Purcell v. Richmond, etc., R. Co., 108 N. C. 414, 112 S. E. 954 (1891).

Carrier under No Duty to Delay Trains. —A common carrier of passengers is under no obligation to delay the departure of its trains, or to look after the safety of persons who attempt to enter them, when they have been stopped long enough to allow passengers to embark and disembark; but it may be liable for injuries incurred by one who, by the invitation or command of persons in charge of the trains, attempts to get on or off while the cars are in motion. Browne v. Raleigh, etc., R. Co., 108 N. C. 34, 12 S. E. 958 (1891).

Duty to Stop Train at Passenger's Station. — A passenger on a railway train is entitled, as a matter of right, to have the train stop at a station to which he has purchased his ticket; and where his destination is a flag station at which the train fails to stop owing to the neglect of the conductor in failing to take up the passenger's ticket in time, the railroad company is answerable for the consequent damages. Elliott v. Norfolk Southern R. Co., 166 N. C. 481, 82 S. E. 853 (1914).

Allowing Passenger to Board Train Which Does Not Stop at His Destination. —It is the duty of the railroad to have an agent at the gate to examine the tickets and allow no one to get upon a train which does not stop at his destination. Not having done this, but having received the plaintiff into the train, without objection, with a ticket calling for a regular station as her destination, and nothing on its face to show it was not good on that train, and she not knowing that that train did not stop there, it was the duty of the defendant to stop the train at that point for her. Hutchinson v. Railroad, 140 N. C. 123, 52 S. E. 263 (1905).

Stepping Off Moving Train at Conductor's Suggestion. — Where a train on which plaintiff was a passenger did not stop at the station to which he had paid his fare, and the conductor agreed that he would slow up the train at a safe place for plaintiff to alight, and the plaintiff consented to jump off and went upon the platform as the train slowed up, but seeing a "go ahead" signal from the rear, did not step for that reason; and then, feeling the increased motion of the train, he stepped off believing he was at a safe place and relying upon the conductor's promise to put him off at a safe place, and was injured, the evidence of the defendant's negligence was sufficient to be submitted to the jury. Cable v. Southern R. Co., 122 N. C. 892, 29 S. E. 377 (1898).

Failure to Stop at Flag Station.—Where plaintiff went to a flag station on a railroad a reasonable time before the arrival of a train on which he intended to take passage and, by reason of absence of the agent and the failure of the engineer to see his signal, the train did not stop for him, the railroad is liable for the actual damages sustained by the plaintiff. Thomas v. Southern R. Co., 122 N. C. 1005, 30 S. E. 343 (1898).

Same — When Punitive Damages Allowed. — It is only when the railway engineer actually sees the signal of an intended passenger at a flag station and willfully passes him by that punitive damages will be allowed in an action for damages, and the burden of showing the reckless disregard of plaintiff's rights is upon the latter. Thomas v. Southern R. Co., 122 N C. 1005, 30 S. E. 343 (1898).

Damages Where Passenger Carried by Station.—When a passenger is carried by his station, he is entitled to damages, and this, though there is no bodily harm, or actual damages. If it is done recklessly or willfully he is entitled to punitive damages. Hutchinson v. Railroad, 140 N. C. 123, 52 S. E. 263 (1905), overruling Smith v. Wilmington, etc., R. Co., 130 N. C. 304, 41 S. E. 481 (1902).

A railroad company is liable for nominal damages for its negligence in failing to stop its train and conveying a passenger beyond the destination to which he had paid his fare, it being a regular station on the line. Cable v. Southern R. Co., 122 N. C. 892, 29 S. E. 377 (1898).

Ejected Passenger Has Right of Action.—A passenger, ejected from a train for failure to pay again fare which he had paid once upon purchasing a ticket, has a right of action. Sawyer v. Norfolk, etc., R. Co., 171 N. C. 13, 86 S. E. 166 (1915).

Same—Passenger Need Not Pay Additional Fare to Prevent Ejection.—Where a passenger is about to be wrongfully ejected from a train, having paid his fare thereon, but being unable to produce his ticket, it is not incumbent on him, by paying money which the conductor has no right to exact, to avoid ejection from the train, as he is not required to buy again his right to remain on the train to his destination. Sawyer v. Norfolk, etc., R. Co., 171 N. C. 13, 86 S. E. 166 (1915).

Where Conductor Fails to Return Ticket.—Where plaintiff purchased through transportation to a destination to reach which it was necessary to change, and the conductor on the first train neglected to return plaintiff's ticket, and, when the conductor of the second train asked for his fare, plaintiff, having no money, vainly attempted to borrow from men who had been on the first train with him, it was negligence on the conductor's part not to have satisfied himself by inquiring of such men whether plaintiff had been on the train with them prior to reaching the changing point, before ejecting plaintiff. Sawyer v. Norfolk, etc., R. Co., 171 N. C. 13, 86 S. E. 166 (1915).

Passenger on Baggage Car. — A person who gets on a blind baggage car, having a ticket, but not having told the conductor that he had it, and the conductor not having seen it, is not entitled to recover as a passenger for injuries received by being pulled off the train by the conductor. McGraw v. Southern R. Co., 135 N. C. 264, 47 S. E. 758 (1904).

Injury Caused by Misdirection of Agent.—The plaintiff, who missed his train by misdirection of the defendant's agent and his refusal to sell him a ticket, could recover for any injury proximately caused by being put out of the station into the cold weather while waiting for the next train. Coleman v. Southern R. Co., 138 N. C. 351, 50 S. E. 690 (1905).

Action May Be Brought in Tort or Contract.—A person who has sustained injuries by reason of the failure of a railroad company to provide proper means of transportation or operate its trains as required by this section may bring an action on contract, or in tort, independent of the statute. Purcell v. Richmond, etc., R. Co., 108 N. C. 414, 12 S. E. 954 (1891).

Same—Damages. — If the tort is the result of simple negligence, damages will be restricted to such as are compensatory; but if it was willful, or committed with such circumstances as show gross negligence, punitive damages may be given. Purcell v. Richmond, etc., R. Co., 108 N. C. 414, 12 S. E. 954 (1891).

Where a railroad company, negligently and by reason of defective and inadequate equipment, failed to carry a passenger to whom it had sold an excursion ticket back to its starting point, but no personal injury or indignity was inflicted upon him, the passenger's right of action is ex contractu and not in tort, and hence exemplary or punitive damages cannot be recovered. Purcell v. Richmond, etc., R. Co., 108 N. C. 414, 12 S. E. 954 (1891), which was overruled in Hansley v. Jamesville, etc., R. Co., 115 N. C. 602, 20 S. E. 528 (1894), is reinstated, but the ground of the judgment is changed. Hansley v. Jamesville, etc., R. Co., 117 N. C. 565, 23 S. E. 443, 53 Am. St. Rep. 600, 32 L. R. A. 551 (1895).

If a train arrives after its schedule time, or misses connection, or delays a passenger at his destination after the schedule time, unless the delay is caused by no fault of the carrier, the passenger has a right to recover compensation for the loss of time and actual expenses. Coleman v. Southern R. Co., 138 N. C. 351. 50 S. E. 690 (1905).

Basis of Exemplary Damages. — The true ground for allowing exemplary damages in an action against a railroad company for damages on account of its negligence is personal injury, or (in the absence of personal injury) insult, indignity, contempt, etc., to which the law imputes bad motive towards the plaintiff. Hansley v. Jamesville, etc., R. Co., 117 N. C. 565, 23 S. E. 443, 53 Am. St. Rep. 600, 32 L. R. A. 551 (1895).

II. SUBSECTION (b).

Connection Contemplated One of Trains as Well as Tracks.—The connection required by subsection (b) of this section is one of trains as well as of tracks. The public cannot travel upon a track alone, nor upon a train without a track. Both are required to furnish facilities for traveling at all, and close connection of both to secure the convenience of the traveling public. North Carolina Corp. Comm. v. Atlantic Coast Line R. Co., 137 N. C. 1, 49 S. E. 191 (1904).

Running Additional Trains.—It is within the power of the Commission to compel a railroad company to make reasonable connections with other roads so as to promote the convenience of the traveling public, and an order requiring the running of an additional train for that purpose, if otherwise just and reasonable, is not inherently unjust and unreasonable because the running of such train will impose some pecuniary loss on the company. Atlantic Coast Line R. Co. v. North Carolina Corp. Comm., 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

Private Persons May Not Maintain Action to Force Continuing Operation.—Persons asserting unliquidated damages past and prospective resulting to them as consignees and consignors from the abandonment of the operation of a railroad may not in their individual capacities maintain an action to force continuing operation of the railroad by the appointment of a permanent operating receiver, since such damages, though possibly different in degree, are not different in kind from those sustained by the public generally, and since the power to require continuous operation in the public interest of the State is vested exclusively by statute in the Utilities Commission. Sinclair v. Moore Cent. R. Co., 228 N. C. 389, 45 S. E. (2d) 555 (1947).

§ 62-234. Commission may authorize operation of fast mail trains; discontinuance of passenger service.—The Commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday. The Commission shall have the power in any case in which the convenience and necessity of the traveling public do not require the running of passenger trains upon its railroad to authorize such railroad company to cease the operation of passenger trains as long as the convenience and necessity of the traveling public shall not require such operation. (1893, c. 97; Rev., s. 2614; C. S., s. 3481; 1933, c. 134, s. 8; c. 528; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

Editor's Note.—For note on abandonments and partial discontinuances of passenger service by railroads, see 31 N. C. Law Rev. 137.

Power of Commission Discretionary.—The power conferred by this section and § 62-118 to authorize a discontinuance of an established service indicates the General Assembly intended that the Commission exercise this power in large measure according to its judgment and discretion. State v. Southern Ry. Co., 254 N. C. 73, 118 S. E. (2d) 21 (1961)

§ 62-235. Commission to inspect railroads as to equipment and facilities, and to require repair.—The Commission is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees; and if any are found by it to be unsafe, it shall at once notify and require the railroad company to put the same in repair. (1907, c. 469, s. 3; C. S., s. 1046; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-236. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.—(a) The Commission is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The Commission is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper. (1907, c. 469, s. 1b; 1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1; C. S., ss. 1047, 1049; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s .1.)

Lack of "Block System" as Negligence.—The lack of a "block system", when required, is held to be negligence per se. Gerringer v. North Carolina R. Co., 146 N. C. 32, 59 S. E. 152 (1907), citing Stewart v. Raleigh, etc., R. Co., 137 N. C. 687, 50 S. E. 312 (1905); Stewart v. Railroad, 141 N. C. 253, 53 S. E. 877 (1906).

§ 62-237. To regulate crossings and to abolish grade crossings.—The Commission may require the raising or lowering of any tracks or roadway at any grade crossing in a road or street not forming a link in or part of the State Highway System and designate who shall pay for the same by partitioning the cost of said work and the maintenance of such crossing among the railroads and municipalities interested in accordance with the formula provided for grade crossing alterations or eliminations on the State Highway System in G. S. 136-20 (b). (1899, c. 164, s. 2, subsec. 13; Rev., s. 1097; 1907, c. 469, s. 1c; 1911, c. 197, s. 1; C. S., ss. 1041, 1048; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross References.—As to municipal authority, see § 160-54 and note. As to intersection with highways, see § 62-223. As to obstructing highways and maintaining defective crossings, see § 62-224. As to cattle guards and private crossings, see § 62-226. As to the power of the State Highway Commission to require the installation of signals and other safety devices, see § 136-20.

Editor's Note.—The General Assembly can make the abolition of grade crossings by railroads imperative instead of leaving it, as now, unexercised in the discretion of the Corporation (now Utilities) Commission, and can place the cost of doing so upon the corporation, whose duty it is to remove them. Northern Pac. R. Co. v. Minnesota, 208 U. S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908), cited in Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911). In the meantime, like any collision, or a derailment, the act itself is prima facie negligence on the part of the railroad company. Marcom v. Raleigh, etc., R. Co., 126 N. C. 200, 35 S. E. 423 (1900). This matter has heretofore been called to the public attention in Cooper v. Railroad, 140 N. C. 209, 52 S. E. 932 (1905); Gerringer v. Railroad, 146 N. C. 32, 59 S. E. 152 (1907); Wilson v. Railroad, 152 N. C. 333, 55 S. E. 257 (1910); Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911), affirmed in 232 U. S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914); McMillian v. Atlantic, etc., R. Co., 172 N. C. 853, 90 S. E. 683 (1916); Borden v. Southern R. Co., 175 N. C. 179, 95 S. E. 146 (1918); Goff v. Atlantic Coast Line R. Co., 179 N. C. 216, 102 S. E. 320 (1920).

Section Supplementary to Police Powers.—The statute authorizing the Commission to require railroads to raise or lower their tracks at a crossing is supplementary to and not in derogation of the exercise by the State, or an incorporated town authorized by it, of such police powers. Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911).

Commission Vested with Full Power.—The Corporation (now Utilities) Commission is vested with full and complete power to compel the raising or lowering of the track, to remove all danger to those using the public roads. Gerringer v. North Carolina R. Co., 146 N. C. 32, 59 S. E. 152 (1907).

Authority is conferred by statute upon the Corporation (now Utilities) Commission to abolish grade crossings by a railroad company when by the operation of the railroad they become dangerous or inconvenient to the public traveling along the highways or private ways. Tate v. Seaboard Air Line R. Co., 168 N. C. 523, 84 S. E. 808 (1915).

Entire Expense on Railroad.—In New York, etc., R. Co. v. Bristol, 151 U. S. 556, 14 S. Ct. 437, 38 L. Ed. 269 (1894), it was held that the imposition upon a railroad company of the entire expense of a change of grade at a railroad crossing is not a violation of any constitutional right. Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911).

In Cleveland v. Augusta, 102 Ga. 233, 29 S. E. 584, 43 L. R. A. 638 (1897). the court held that the railroad company was liable for the expense of raising its roadbed to conform to the city grade, and said that it must yield to the reasonable burden imposed by the growth and development of the county or the city, and where the public welfare demands a change of grade of the highway or street, the railroad company must, at its own expense, make such alterations in the grade of its crossings as will conform to the new grade. Atlantic Coast Line Railroad v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911).

§ 62-238. To require extension or contraction of railroad switching limits.—(a) The Commission may require, after notice and hearing to affected persons, the extension or contraction of the switching limits of any railroad or of any terminal or junction served by more than one railroad, in order to prevent discrimination or to serve the public convenience and necessity.

(b) The boundaries of switching limits which have been or may be established hereunder shall be boundaries to be observed by the railroad company, carrier or carriers whether or not the traffic moving into said boundaries or out of said boundaries is either interstate or intrastate in character.

(c) The failure or refusal of any railroad company, carrier or carriers to conform to or obey any decision, rule, regulation or order made by the Commission under the provisions of this section shall subject said railroad company, carrier or carriers refusing or failing to comply herewith to a penalty of five hundred dollars ($500.00); and each day that such failure or refusal to conform to or obey any decision, rule, regulation or order of the Commission shall subject said railroad company, carrier or carriers to a separate and distinct penalty of five hundred dollars ($500.00), the same to be certified to and prosecuted by the Attorney General. (1947, c. 1075, ss. 1-4; 1963, c. 1165, s. 1.)

§ 62-239. To fix rate of speed through municipalities; procedure.—(a) If a railroad company is of the opinion that an ordinance of a municipality through which a line of its railroad passes regulating the speed at which trains may run while passing through said municipality is unreasonable or oppressive, such railroad company may file its petition before the Commission, setting forth all the facts, and asking relief against such ordinance, and that the Commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, by registered or certified mail, to the mayor or chief officer of the town or municipality, together with a notice from the Commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the municipality named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the Commission shall hear the petition, but any hearing granted by the Commission shall be had at the municipality where the conditions complained of are alleged to exist, or some member of the said Commission shall take evidence, both for the petition and against it, at such municipality, and report to the full Commission before any decision is made by the Commission.

(b) If the Commission finds that such ordinance is reasonable and just the petition shall be dismissed, and the petitioner shall be taxed with the cost. If the Commission is of the opinion that the ordinance is unreasonable, it shall prescribe the maximum rates of speed for passing through such municipality. Thereafter, the railroad company may run its trains through such municipality at speeds not greater than those prescribed by the Commission, and the ordinance adjudged to be unreasonable shall not be enforced against such railroad company.

(c) If the judgment of the Commission is in favor of the petitioner, the Commission may make such order as to the payment of the costs as shall seem just. It may require either party to pay the same or it may divide the same. (1903, c. 552; Rev., ss. 1101, 1102, 1103; C. S., s. 1058; 1933, c. 134, s. 8; 1941, c. 97; 1957, c. 1152, s. 5; 1963, c. 1165, s. 1.)

Local Modification.—Cumberland, Rockingham, Union, Wayne: C. S. § 1058.

Regulation within Police Power of State.—In Gladson v. Minnesota, 166 U. S. 427, 17 S. Ct. 628, 41 L. Ed. 1064 (1897), the court said: "The state which created the corporation may make all needful regulations of a police character for the government of the company while operating its road within the jurisdiction. It may prescribe the rate of speed at which the trains shall run, and the places at which they shall stop, and may make any other reasonable regulations for their management in order to secure the object of its incorporation, and the safety, good order, convenience and comfort of its passengers and of the public." North Carolina Corp. Comm. v. Atlantic Coast Line R. Co., 137 N. C. 1, 49 S. E. 191, 197 (1904).

§ 62-240. Injury to passenger while in prohibited place.—If any passenger on any railroad is injured in any portion of a train where passengers are prohibited by notice conspicuously posted in its passenger cars, such railroad shall not be liable for the injury, provided the railroad has furnished sufficient room within its passenger cars for the proper accommodation of all passengers on the train. (1871-2, c. 138, s. 42; Code, s. 1978; Rev., s. 2628; C. S., s. 3509; 1963, c. 1165, s. 1.)

Effect of Posting Notice. — When this section has been complied with, a rule of a railroad company prohibiting passengers from going on the platform while the train is in motion is given the force and effect of a State law, barring a recovery for injuries sustained under such circumstances. Shaw v. Seaboard Air Line R. Co., 143 N. C. 312, 55 S. E. 713 (1906).

Notice Need Be Only in English.—This section requires only that the notice to be placed by a railroad company in its coach, relieving the company from liability to a passenger injured while riding on the platform, etc., shall be in English, and the fact that such passenger cannot read that language is immaterial. Bane v. Norfolk Southern R. Co., 176 N. C. 247, 97 S. E. 11 (1918).

Riding on Platform Prima Facie Negligence.—It is prima facie negligence for a passenger to voluntarily ride on the platform of a rapidly moving train. Wagner v. Atlantic Coast Line R. Co., 147 N. C. 315, 61 S. E. 171 (1908).

Section Not Applicable When Passenger Alighting.—This section is for the protection of passengers and should be reasonably construed, and has no application when the injury complained of was received as the passenger was alighting at a regular station after the train had stopped for that purpose, though he may have ridden in violation of the statute before the train had stopped. Kearney v. Seaboard Air Line R. Co., 158 N. C. 521, 74 S. E. 593 (1912).

Person on Passenger Platform at Station.—One who is on the passenger platform of railroad company at its station with the purpose of becoming a passenger on its expected train is entitled to the protection due a passenger from dangerous conditions and usage there. Thomas v. Southern R. Co., 173 N. C. 494, 92 S. E. 321 (1917).

§ 62-241. Negligence presumed from killing livestock. — When any cattle or other livestock shall be killed or injured by the engine or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the railroad company in any action for damages against such company: Provided, that no person shall be allowed the benefit of this section unless he shall bring his action within six (6) months after his cause of action shall have accrued. (1856-7, c. 7; Code, s. 2326; Rev., s. 2645; C. S., s. 3482; 1963, c. 1165, s. 1.)

Cross Reference.—As to venue of an action against railroad, see § 1-81.

Editor's Note. — Several of the earlier cases, notably Doggett v. Richmond, etc., R. Co., 81 N. C. 459 (1879), and Durham v. Wilmington, etc., R. Co., 82 N. C. 352 (1880), stated that, where the facts are known and show there was no negligence on the part of the railroad, the presumption created by this section does not apply. But it would have been more accurate to say that the prima facie case here created is rebutted where the undisputed facts show there was no negligence on the part of the defendant, than to say the statute did not apply to such a case. There is no exception in the statute. It is in terms general and applies alike to all cases of killing stock by a railroad. The rule is thus stated in the later cases. See Hardison v. Atlantic, etc., R. Co., 120 N. C. 492, 26 S. E. 630 (1897).

In some of the early decisions it was said that when livestock were injured by the engine or cars of a railroad company and an action thereon was brought within six months, this section raised a presumption of negligence and cast upon the defendant the burden of rebutting such presumption. Carlton v. Wilmington, etc., R. Co., 104 N. C. 365, 10 S. E. 516 (1889); Bethea v. Raleigh, etc., R. Co., 106 N. C. 279, 10 S. E. 1045 (1890). But it is now the established rule, as settled by the later and prevailing cases, that "prima facie evidence of negligence" means no more than evidence sufficient to carry the case to the jury, and to justify, but not compel, a verdict as for a negligent wrong. See Ferrell v. Norfolk Southern R. Co., 190 N. C. 126, 129 S. E. 155 (1925).

Section Applies When Facts Known.—The presumption of negligence in killing livestock, when the action is brought within six months, applies where the facts are known. Hanford v. Southern R. Co., 167 N. C. 277, 83 S. E. 470 (1914).

Applies When Stock under Control of Person. — The statutory presumption of negligence for killing livestock, when the action is brought within six months, is not rebutted by showing that the livestock were under the control of a person at the time. Randall v. Richmond, etc., R. Co., 104 N. C. 410, 10 S. E. 691 (1889).

Same—When Animal Hitched to Vehicle. — The statutory presumption of negligence of a railroad company in killing livestock, when the action is brought within six months, applies whether a horse, the subject of the action, was hitched to a buggy at the time or running at large. Hanford v. Southern R. Co., 167 N. C. 277, 83 S. E. 470 (1914).

Where it is proven or admitted that cattle have been killed by the train of a railroad company within six months before the action was brought, there is a presumption that the killing was caused by the negligence of such company, and this presumption arises from the fact of killing, where the animal is hitched to a wagon or cart, as well as where it is straying at large when killed. Randall v. Richmond, etc., R. Co., 107 N. C. 748, 12 S. E. 605 (1890).

Does Not Apply to Fowl. — No presumption of negligence against a railroad company is raised by the mere fact of killing fowl, etc., upon its track in the operation of its trains. This section makes it prima facie evidence of negligence in respect only to "cattle or other livestock," which does not include geese or other fowl within its terms. James v. Atlantic, etc., R. Co., 166 N. C. 572, 82 S. E. 1026 (1914).

Does Not Apply to Dogs.—The killing of a dog by a street railway is not prima facie evidence of negligence. Moore v. Charlotte Elect. R., etc., Co., 136 N. C. 554, 48 S. E. 822 (1904).

When Horses Run into Trestle.—In an action against a railroad company for damages for injuries to horses, where the evidence showed that the horses were injured by running into a trestle, and that the train was 100 yards from the trestle when they were injured, and stopped 100 feet from the trestle, this section did not apply. Ramsbottom v. Atlantic Coast Line R. Co., 138 N. C. 38, 50 S. E. 448 (1905).

Plaintiff Must Prove Case. — Where a railroad train runs into, kills or injures livestock, and the owner brings his action for damages within the statutory six months, the prima facie case of negligence raised by the statute is sufficient to take the case to the jury, but does not change the burden of proving the issue of negligence from the plaintiff. Ferrell v. Norfolk Southern R. Co., 190 N. C. 126, 129 S. E. 155 (1925).

How Presumption Rebutted.—In an action against a railroad company for killing certain mules of the plaintiff, where negligence is established by force of this section, it can only be rebutted by showing that by the exercise of due diligence the stock could not have been seen in time to save them. Pippen v. Wilmington, etc., R. Co., 75 N. C. 54 (1876).

This rule can only be rebutted by showing that the agents of the railroad company used all proper precautions to guard against damage. It is not sufficient to prove that there was probably no negligence. Battle v. W. & W. Railroad, 66 N. C. 343 (1872).

Same — Presumption Not Repelled. — Where plaintiff's horse had been injured on a railroad by the running of a train against it, and it was doubtful from defendant's testimony whether the brakes had been applied to the wheels of the train after the animal was discovered to be on track, the prima facie case of negligence made by this section was not repelled. Clark v. Western North Carolina Railroad, 60 N. C. 109 (1863).

Same — Instructions. — Where the killing of stock by a railroad is admitted or proven, the trial judge may instruct the jury that a certain state of facts, if believed by them, would rebut the presumption of negligence, but not that certain evidence, though uncontradicted, would do so. Baker v. Roanoke, etc., R. Co., 133 N. C. 31, 45 S. E. 347 (1903).

When Owner Permits Cattle to Stray on Railroad Track.—If the owner of cattle permits them to stray off and get upon the track of a railroad and they are killed or hurt, the railroad company is not liable unless the train was being carelessly run, or by the exercise of proper care after the animals were discovered the injury could have been avoided or prevented. Doggett v. Richmond, etc., R. Co., 81 N. C. 459 (1879).

Effect of Local Stock Law.—The prima facie evidence of negligence on the part of a railroad company in a suit for damages for killing stock is not impaired by a local act requiring stock to be fenced in, but the defendant must repel the presumption by satisfactory proof to the jury. Roberts v. Richmond, etc., R. Co., 88 N. C. 560 (1883).

No Duty to Cut Down Weeds.—A railroad company is not negligent in failing to cut down bushes or weeds on the right of way beyond the portion over which it is exercising actual control for corporate purposes, though a horse is killed as a result of the engineer's inability to see him on account of the weeds. Ward v. Wilmington, etc., R. Co., 109 N. C. 358, 13 S. E. 926 (1891).

Measure of Damages. — The measure of damages when a cow is killed by a train is the difference in the value of the cow and that of the beef. Roberts v. Richmond, etc., R. Co., 88 N. C. 560 (1883).

When Judge May Direct Verdict.—This section applies to all cases of killing stock by a railroad, and while the presumption of negligence arising from the killing may be rebutted, it is only where the undisputed facts show there was no negligence that the trial judge should direct a verdict for the defendant. Hardison v. Atlantic, etc., R. Co., 120 N. C. 492, 26 S. E. 630 (1897).

Defendant Not Entitled to Nonsuit.—Where a plaintiff makes a prima facie case by suing for the killing of a cow within six months, the defendant is not entitled to nonsuit on the ground that such prima facie case is rebutted by the evidence of the defendant. Davis v. Railroad Co., 134 N. C. 300, 46 S. E. 515 (1904).

Applied in Aycock v. W. & W. R. Road Co., 51 N. C. 231 (1858); Wilson v. Norfolk, etc., R. Co., 90 N. C. 69 (1884); Snowden v. Norfolk, etc., Railroad, 95 N. C. 93 (1886); Carlton v. Wilmington, etc., R. Co., 104 N. C. 365, 10 S. E. 516 (1889); Coburn v. Atlantic Coast Line R. Co., 227 N. C. 695, 44 S. E. (2d) 200 (1947).

§ 62-242. Liability of railroads for injuries to employees; fellow-servant rule; defective machinery; contributory negligence; assumption of risk; contracts void.—(a) Any servant or employee of any railroad company operating in this State who shall suffer injury to his person or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company, by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.

(b) Every common carrier by railroad shall be liable in damages to any person suffering injury while he is employed by such carrier, or in the case of the death of such employee, to his or her personal representative, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engine, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(c) In all actions hereafter brought against any common carrier by railroad to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(d) In any action brought against any common carrier under or by virtue of any of the provisions of this section to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee, or the death or injury was caused by negligence.

(e) Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier by railroad to exempt itself from any liability created by this section, shall to that extent be void: Provided, that in any action brought against such common carrier, under and by virtue of any of the provisions of this section, such common carrier may set off therein any sum it has contributed or paid to any insurance or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which such action was brought.

(f) The provisions of this section relating to liability for damages shall also apply to logging roads and tramroads.

(g) The term "common carrier" as used in this section shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier. The term "employee" or "servant" as used in this section shall include any person carried on the payroll of such railroad company and required to be on its property regardless of whether such person is receiving compensation at the time or not. (1897 (Pr.), c. 56; Rev. s. 2646; 1913, c. 6, ss. 1, 2, 3, 4, 5; 1915, c. 256; 1919, c. 275; C. S., ss. 3464, 3465, 3466, 3467, 3468, 3469, 3470; 1947, c. 916; 1963, c. 1165, s. 1.)

I. General Consideration.
II. Fellow-Servant Rule.
III. Assumption of Risk.
IV. Contributory Negligence.
V. Contracts and Rules Exempting from Liability.
VI. Logging Roads and Tramroads.

Cross References.

As to venue of an action against railroad, see § 1-81. As to action for death by wrongful act generally, see § 28-173.

I. GENERAL CONSIDERATION.

Editor's Note.—The statutes now combined in this section, regulating the liability of railroads for injuries to employees, were enacted prior to the adoption of the Workmen's Compensation Act, §§ 97-1 to 97-122. Section 97-13 expressly provides that the Workmen's Compensation Act is not applicable to railroads or railroad employees and that this section is not repealed. According to § 97-13, however, the exemption as to railroads does not apply to electric street railroads and their employees.

In Hobbs v. Atlantic, etc., R. Co., 107 N. C. 1, 12 S. E. 124 (1890), it was held that a railroad company was not liable for injury to its servants, resulting from the negligence of a fellow servant. In that case the attention of the legislature was called to the fact that many of the states had by legislative enactment abrogated the fellow-servant rule in so far as it applied to railroad employees. In 1897 such a statute (now subsection (a) of this section) was passed, and its constitutionality was sustained in Hancock v. Norfolk, etc., Railway, 124 N. C. 222, 32 S. E. 679 (1899).

In Mott v. Southern R. Co., 131 N. C. 234, 237, 42 S. E. 601 (1902), it was sought to curtail and restrict the statute so that it should apply only to employees engaged in operating trains, but the court held the contrary and said: "The language of the statute is both comprehensive and explicit. It embraces injuries sustained by 'any servant or employee of any railway company . . . in the course of his services or employment with said company.' The plaintiff was an employee and was injured in the course of his employment."

However, to come within the provisions of subsection (a) a railroad must be "operating" and not "under construction." See Nicholson v. Railroad, 138 N. C. 516, 51 S. E. 40 (1905); Bailey v. Meadows Co., 152 N. C. 603, 68 S. E. 11 (1910).

The statute that is now subsection (b) of this section was passed after Congress had passed a similar statute applicable to employees engaged in interstate commerce. It is not as broad as subsection (a), for it applies only to common carriers by railroad, while subsection (a) applies to all railroads. See Williams v. Kinston Mfg. Co., 175 N. C. 226, 95 S. E. 366 (1918). But see subsection (f), making both subsections applicable to logging roads and tramroads.

Subsection (b) of this section applies only to employees engaged exclusively in intrastate commerce. There is a federal statute similar in its provisions which applies to employees engaged in interstate commerce. See 45 U. S. C. § 51. Rights accruing under the latter statute may be enforced in the state courts as well as the federal courts.

There is a distinction between the State and federal statute as to the basis of the damages assessed. Under the State statute the damages are based upon the present worth of the net pecuniary value of the life of the deceased. Ward v. North Carolina R. Co., 161 N. C. 179, 176 S. E. 717 (1912). Under the United States statute the damages are based upon the pecuniary loss sustained by the beneficiary. North Carolina R. Co. v. Zachary, 232 U. S. 248, 34 S. Ct. 305, 58 L. Ed. 591 (1914).

There is also a distinction as to the beneficiary. Under the State statute the jury assesses the value of the life of the decedent in solido, which is disbursed under the statute of distributions. Under the United States statute, the jury must find as to each plaintiff what pecuniary benefit each plaintiff had reason to expect from the continued life of the deceased, and the recovery must be limited to compensation of those relatives in the proper class who are shown to have sustained such pecuniary loss. The personal representatives sue for the benefit of the next of kin. See Horton v. Seaboard Air Line R. Co., 175 N. C. 472, 95 S. E. 883 (1918).

Under § 28-173 none of the amount recovered in action for death by wrongful act belongs to the estate of the deceased and none of it is liable for the payment of his debts.

"Common Carrier" Defined. — A common carrier is one who, by virtue of his calling, undertakes for compensation to transfer personal property from one place to another for all persons who choose to employ him. Williams v. Kinston Mfg. Co., 175 N. C. 226, 95 S. E. 366 (1918).

This section applies only to employees who are engaged in duties connected with or incidental to the operation of railroads, logging roads or tramroads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833 (1933).

Statute Applicable. — The federal and state courts have concurrent jurisdiction and the question of which statute will apply depends upon whether or not the employee was engaged in interstate commerce. Renn v. Seaboard Air Line R. Co., 170 N. C. 128, 86 S. E. 964 (1915); West v. Atlantic, etc., R. Co., 174 N. C. 125, 93 S. E 479 (1917). See also Capps v. Atlantic, etc., R. Co., 178 N. C. 558, 101 S. E. 216 (1919).

When Interstate Question Immaterial.—In an action brought by a switchman of the defendant's train crew to recover damages for alleged negligence of the defendant in providing an improper coupler on a train made up and ready to start for a destination beyond the State, the question whether the train was an interstate one, or the plaintiff was at the time engaged in interstate commerce, is not material, since the enactment of this section, which, in this respect, is substantially identical with the federal statute. Sears v. Atlantic, etc., R. Co., 169 N. C. 446, 86 S. E. 176 (1915).

As to the time within which the action must be brought, under the federal act, see Belch v. Seaboard Air Line R. Co., 176 N. C. 22, 96 S. E. 640 (1918); King v. Norfolk-Southern R. Co., 176 N. C. 301, 97 S. E. 29 (1918).

Effect of Nonsuit in Action under Federal Act.—A judgment as of nonsuit upon the merits of an action brought by the administratrix of an injured employee of a railroad company under the Federal Employers' Liability Act will not operate as a bar to the same cause brought under the laws of this State, §§ 60-66, 60-67, the law and facts applicable to the first not being identical with those applicable to the second. Fuquay v. A. & W. Ry. Co., 199 N. C. 499, 155 S. E. 167 (1930).

Applied in Byers v. Boice Hardwood Co., 201 N. C. 75, 159 S. E. 3 (1931); Bateman v. Brooks, 204 N. C. 176, 167 S. E. 627 (1933); Graham v. Atlantic Coast Line R. Co., 240 N. C. 338, 82 S. E. (2d) 346 (1954).

II. FELLOW-SERVANT RULE.

Abrogation of Fellow-Servant Rule.—Subsection (a) of this section is an unconditional abrogation of the kindred doctrines of fellow servant and assumption of risk as applied to railroad companies. Coley v. North Carolina R. Co., 129 N. C. 407, 40 S. E. 195 (1901).

The law relating to the doctrine of fellow servants has been abrogated in regard to its application to those employed by railroad companies operating in this State. Robinson v. Ivey & Co., 193 N. C. 805, 138 S. E. 173 (1927).

Subsection (a) Applies to Any Department of Railroad.—The provisions of subsection (a) of this section apply to an injury negligently inflicted by a fellow servant in any department of a railroad being operated. Buckner v. Madison County R. Co., 164 N. C. 201, 80 S. E. 225 (1913).

It Applies to Manufacturing Company Operating Spur Track.—Subsection (a) of this section applies to a manufacturing corporation which owns and operates a spur track on its grounds as incidental to its main business, with respect to servants employed in such service. Hairston v. United States Leather Co., 143 N. C. 512, 55 S. E. 847 (1906); United States Leather Co. v. Howell, 151 F. 444 (1907).

But Not to Railroad under Construction.—Subsection (a) of this section does not apply to an employee engaged in building a trestle for the extension of a railroad, at a point some miles from the track on which trains are being operated. Nicholson v. Railroad, 138 N. C. 516, 51 S. E. 40 (1905); Bailey v. Meadows Co., 152 N. C. 603, 68 S. E. 11 (1910).

Street Railways.—Before the enactment of the Workmen's Compensation Act, subsection (a) of this section was held to apply to street railways. Hemphill v. Buck Creek Lumber Co., 141 N. C. 487, 54 S. E. 420 (1906); Brookshire v. Asheville Elect. Co., 152 N. C. 669, 68 S. E. 215 (1910). See § 97-13 and Editor's Note to this section.

Subsection (a) Operates on All Employees.—Subsection (a) of this section operates on all employees of the company, whether in superior, equal, or subordinate positions. Fitzgerald v. Southern R. Co., 141 N. C. 530, 54 S. E. 391 (1906); Bloxham v. Stave, etc., Corp., 172 N. C. 37, 89 S. E. 1013 (1916).

Regardless of Kind of Employment.—The provisions of subsection (a) do not require that the servant, at the time of the injury, should be engaged in the running or operation of a train, but apply to any other kind of service, whether more or less dangerous. Mincey v. Atlantic Coast Line R. Co., 161 N. C. 467, 77 S. E. 673 (1913).

And Must Be Read into Contract of Service. — Where a contract of service with the defendant railroad was made in this State, the provisions of subsection (a) of this section must be read into the contract, and there being no evidence that the service was to be performed altogether in another state, it would seem that the relative rights and disabilities of the parties are fixed by the terms of the contract. Miller v. Railroad, 141 N. C. 45, 53 S. E. 726 (1906).

Injury When Duty Delegated to Another. — Where a railroad company delegated its duty of loading a car to a lumber company making a shipment, it is liable for any injury to its own employee caused by negligence of the employees of the lumber company in loading the car. Britt v. Carolina, etc., R. Co., 144 N. C. 242, 56 S. E. 910 (1907).

Injury in Loading Logs. — Where a tram railroad was engaged in loading logs and a fellow servant of the plaintiff, acting in the scope of his employment in loading the logs, negligently caused one of the logs to drop upon the plaintiff and injure him, the employer was liable in damages for the negligent injury proximately caused. Lilley v. Interstate Cooperage Co., 194 N. C. 250, 139 S. E. 369 (1927).

Injury by Falling Tree.—Subsection (a) of this section applied where an employee was injured by a tree falling upon him as he was riding on the car of defendant's logging road in the performance of his duties, a change of wind having deflected the tree from its expected course, so that it struck the tops of smaller trees and thence fell upon the plaintiff, for the engineer should reasonably have seen the danger in time to have stopped the train and avoided the injury, after the course of the falling tree had been unexpectedly deflected. Bloxham v. Stave, etc., Corp., 172 N. C. 37, 89 S. E. 1013 (1916).

Defective Ladder. — Where two employees of a railroad company were instructed to do certain work requiring the use of a ladder, and a discarded ladder, which proved defective, was selected from several supplied by the company, the others being sound, and one of the employees sustained a fall because of the defect and sued for damages therefor, subsection (a) of this section applied. Mincey v. Atlantic Coast Line R. Co., 161 N. C. 467, 77 S. E. 673 (1913).

Flagman at Crossing. — Where the plaintiff was employed by a railroad to warn pedestrians of approaching trains at a public crossing and to signal the engineer, and the plaintiff was injured by the defendant's negligence when he had crossed the platform on a train and was on the lowest step of the car for the performance of his duty on the other side, the evidence was sufficient upon the question of employment to sustain a verdict in plaintiff's favor. West v. Atlantic Coast Line R. Co., 174 N. C. 125, 93 S. E. 479 (1917).

Engineer Injured by Assistant's Negligence. — It is the duty of a railroad company to furnish its engineer a competent person to assist him in fixing his locomotive, when such assistance is necessary from the character of the work being done; and the company is liable in damages when the assistant fails to exercise ordinary care to prevent an injury, such failure being the proximate cause of the injury. Horton v. Seaboard Air Line Railway, 145 N. C. 132, 58 S. E. 993 (1907).

Employee Negligently Shot by Fellow Servant.—Where a baggage agent of a railroad company, in the course of his employment in getting some baggage checks from a drawer to a desk in the baggage room, removed a pistol which he knew to be loaded, took it in his hand, and in a careless manner opened another drawer to the desk, and in doing so caused the pistol to fire, and killed his assistant, his negligent acts were attributable to the company employing him. Moore v. Southern R. Co., 165 N. C. 439, 81 S. E. 603 (1914).

Accident in Doing Work of a Simple Nature.—The plaintiff was employed by a railroad to replace the crossties under the rails of the road. While a tie was being depressed into position by his fellow servant his hand was caught between the end of the tie and the rail and injured. The plaintiff had no explanation to make of the occurrence, except "he had his hand on the tie to bear it down, and it went over and the end flew up and caught his hand." It was held that the injury was the result of an accident in doing work of a simple nature, and a recovery should have been denied as a matter of law. Lloyd v. Southern R. Co., 168 N. C. 646, 85 S. E. 10 (1915).

III. ASSUMPTION OF RISK.

Editor's Note.—After the passage of a similar federal statute applying to employees engaged in interstate commerce the North Carolina legislature enacted the statute that is now subsection (d) of this section. It is not as broad as subsection (a), for it applies only to common carriers.

General Consideration.—The doctrine of assumption or risk is that an employee assumes the risk of accidents and injuries incident to the business properly operated. He does not assume the risk caused by the negligence of the company, in not furnishing proper appliances or in any other respect. Horton v. Seaboard Air Line R. Co., 175 N. C. 472, 95 S. E. 883 (1918).

The employee assumes no risk in the proper use of defective appliances after notifying the employer, who promises to remedy the defect; but the employee must use the appliances with proper regard to their known condition, and, failing in this, he would be guilty of contributory negligence. Britt v. Carolina, etc., R. Co., 144 N. C. 242, 56 S. E. 910 (1907).

It is not the mere working in the presence of an obvious defect in an appliance furnished by the master that will constitute contributory negligence on the part of the servant; and assurances on the part of the former that needed repairs will be made will frequently relieve the latter of this charge. Bissell v. Greenleaf-Johnson Lumber Co., 152 N. C. 123, 67 S. E. 259 (1910).

Defense of Assumption of Risk Eliminated. — In an action for negligence against a railroad company operating in this State, the defense of working on in the presence of a defective appliance or machine, usually dealt with under the head of assumption of risk, has been eliminated. Biles v. Seaboard Air Line R. Co., 143 N. C. 78, 55 S. E. 512 (1906).

Under the construction of subsection (a) of this section the defense of assumption of risk is not available. Moore v. Rawls, 195 N. C. 125, 144 S. E. 552 (1928). See Coley v. North Carolina R. Co., 129 N. C. 407, 40 S. E. 195 (1901).

Duty of Employer to Furnish Safe Tools.—It is the master's duty to furnish the servant such tools as are reasonably safe and suitable for the work in which he is engaged, and in general use. Bissell v. Greenleaf-Johnson Lumber Co., 152 N. C. 123, 67 S. E. 259 (1910); Eplee v. Southern R. Co., 155 N. C. 293, 71 S. E. 325 (1911). If he fails to do so he exposes the servant to extraordinary risks. Moore v. Railroad, 141 N. C. 111, 53 S. E. 745.

Acquiescence in Use of Inappropriate Appliance.—The master's acquiescence in the use of an appliance for some purpose other than that for which it was intended puts him in the same position as if the appliance had been originally furnished for that purpose. Wallace v. Railroad, 141 N. C. 646, 54 S. E. 399 (1906).

Obviously Defective Machinery. — The use of machinery obviously defective will not prevent a person from a recovery for an injury resulting therefrom, unless the apparent danger is so great that its assumption would amount to a reckless indifference to probable consequences. Coley v. North Carolina R. Co., 129 N. C. 407, 40 S. E. 195 (1901).

When Plaintiff Causes Own Injury. — When under instructions from his superior officer the plaintiff, in repairing a piece of machinery, with knowledge of its defects, negligently caused an injury to himself in such manner as it was his duty in repairing to prevent, he cannot recover, and this section has no application. Mathis v. Atlantic Coast Line R. Co., 144 N. C. 162, 56 S. E. 864 (1907).

Liability Not Affected by Act of Shipper.—The duty of the railroad company to have a crosspiece used to keep steady lumber on flat cars secured in a reasonably safe manner for the use to which its servants customarily put it is not affected by the fact that the shipper puts it on in loading the car. Wallace v. Railroad, 141 N. C. 646, 54 S. E. 399 (1906).

Failure to Equip Car with Automatic Couplers.—Where the jury found that the plaintiff was injured by the negligence of the defendant in failing to have its cars equipped with automatic couplers, the only defense open to the defendant, in the absence of any evidence of recklessness, was whether plaintiff was injured in the course of his service and employment. Hairston v. United States Leather Co., 143 N. C. 512, 55 S. E. 847 (1906)

Defective Coupler.—In an action for an injury alleged to have been sustained from a defective coupler, the use of a defective coupler was a violation of a positive duty, and, in connection with an express order of the superintendent to make the coupling, was continuing negligence, and the causa causans of the injury. Liles v. Fosburg Lumber Co., 142 N. C. 39, 54 S. E. 795 (1906); Sears v. Atlantic, etc., R. Co., 169 N. C. 446, 86 S. E. 176 (1915).

Engine without Handhold Along Pilot Beam. — Where the plaintiff's evidence showed that he was at the time of the injury at the usual position provided for the purpose on the pilot of the engine by order of his superiors and in the necessary performance of his duties, and that he was thrown and injured because the engine did not have the usual handhold along the pilot beam, and that he did not know the handhold was lacking when he got on, and was guilty of no carelessness, his right of action was established. Biles v. Seaboard Air Line R. Co., 143 N. C. 78, 55 S. E. 512 (1906).

Exposed Screw on Power Drill. — A power drill furnished by a master to a servant for boring holes in iron plates, having an exposed set-screw thereon dangerous in operating the drill and which is usually covered or countersunk, is not a proper tool for the purpose, and the master is liable in damages proximately caused by the defect. Eplee v. Southern R. Co., 155 N. C. 293, 71 S. E. 325 (1911).

Improper Ladder. — Where it was the custom of a railroad company to furnish ladders to its painters, and the plaintiff, a painter, had not been furnished with a proper ladder, but with an ordinary ladder that extended beyond the steep roof of the building upon which he was at work, and the ladder fell over and struck the plaintiff, causing him to fall, and the injury would not have occurred if a proper ladder or appliance had been furnished, the evidence was sufficient to take the case to the jury upon the issue of the company's actionable negligence. Jones v. Atlantic Coast Line R. Co., 194 N. C. 227, 139 S. E. 242 (1927).

Defective Handcar. — Where plaintiff was injured in consequence of using a defective handcar, which he had theretofore repeatedly reported to his employer as defective, and for which a replacement had been promised, the employer was liable. Boney v. Atlantic, etc., R. Co., 145 N. C. 248, 58 S. E. 1082 (1907).

Evidence. — Direct evidence of negligence is not required, but the same may be inferred from acts and attendant circumstances, and if the facts proved establish the more reasonable probability that the defendant has been guilty of actionable negligence, the case cannot be withdrawn from the jury, though the possibility of accident may arise on the evidence. Fitzgerald v. Southern R. Co., 141 N. C. 530, 54 S. E. 391 (1906).

Question for Jury. — Where the employee of a railroad company, in intrastate commerce, was ruptured while handling heavy baggage at the station by the unaided use of his personal strength, when the company had promised to furnish him a truck for the service, the use of which would have avoided the injury, it is for the jury to determine whether the defendant was negligent in failing to supply the truck, or whether the plaintiff assumed the risk on attempting to lift the trunk. Hines v. Atlantic, etc., R. Co., 185 N. C. 72, 116 S. E. 175 (1923). See also, Horton v. Seaboard Air Line R. Co., 175 N. C. 472, 95 S. E. 883 (1918); Wallace v. Tallahassee Power Co., 176 N. C. 558, 97 S. E. 611 (1918).

IV. CONTRIBUTORY NEGLIGENCE.

Editor's Note. — The provisions of subsection (c) of this section apply only to employees engaged exclusively in intrastate commerce. There is a similar federal statute which applies to employees engaged in interstate commerce. See 45 U. S. C. § 53.

See 13 N. C. Law Rev. 256.

In General.—The doctrine of comparative negligence is only recognized by our courts in instances coming within the meaning of the Federal Employers' Liability Act, and subsection (c) of this section, and then only for the purpose of mitigating the damages or as a partial defense. Moore v. Chicago Bridge, etc., Works, 183 N. C. 438, 111 S. E. 776 (1922).

To What Employees Subsection (c) Applies.—Subsection (c) of this section applies only to employees who are engaged in duties connected with or incidental to the operation of railroads, logging roads or tramroads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833 (1933).

Contributory Negligence and Assumption of Risk.—Under subsection (c) of this section, the plaintiff was entitled to have his cause submitted to the jury, for, as herein provided, contributory negligence is no longer a bar to an action by an employee against a railroad for injuries sustained during his employment, and the question of assumption of risk was for the jury, the burden of proof being upon the defendant. Hines v. Atlantic Coast Line R. Co., 185 N. C. 72, 116 S. E. 175 (1923).

There is a vital difference between contributory negligence and assumption of risk, which is thus stated, 1 Labatt on Master and Servant, secs. 305 and 306, as follows: "Assumed risk is founded upon the knowledge of the employee, either actual or constructive, of the risks to be encountered, and his consent to take the chance of injury therefrom. Contributory negligence implies misconduct, the doing of an imprudent act by the injured party, or his dereliction in failing to take proper precaution for his personal safety. The doctrine of assumed risk is founded upon contract, while contributory negligence is solely matter of conduct." This distinction has often been approved by the United States Supreme Court in cases under the Employers' Liability Act. Seaboard Air Line Railway v. Horton, 233 U. S. 492, 34 S. Ct. 635, 58 L. Ed. 1062 (1914).

When Jury Fails to Allow for Contributory Negligence. — Where the plaintiff's complaint demands damages in a certain amount in his action involving the issues of negligence and contributory negligence, and the application of the rule of comparative negligence under the provisions of subsection (c) of this section, the fact that the jury has rendered a verdict for damages to the full amount demanded in the complaint under a proper instruction does not alone show that the jury had failed to follow the rule of damages prescribed in such instances, and the verdict will not on that ground be disturbed on appeal. Brooks v. Suncrest Lumber Co., 194 N. C. 141, 138 S. E. 532 (1927).

Evidence Raising Issue for Jury.—In an action for a deceased employee's negligent death, the fact that it was caused by a head-on collision on defendant railroad company's trestle, in broad daylight, with another of its cars, is some evidence that the defendant's negligence proximately caused the employee's death, and raises the issue for the determination of the jury though the intestate might have been guilty of contributory negligence. Hinnant v. Tidewater Power Co., 187 N. C. 288, 121 S. E. 540 (1924).

Negligence in Obtaining Improper Ladder. — The failure of a railroad company to furnish to an employee engaged in the scope of his employment in painting a station house, a proper ladder or appliance, which failure caused the injury in suit, comes within the provisions of subsection (c) of this section, and the contributory negligence of the plaintiff is not a complete bar to his recovery, but is only to be considered by the jury in diminution of the damages. Jones v. Atlantic Coast Line R. Co., 194 N. C. 227, 139 S. E. 242 (1927).

Motion to Nonsuit. — Where plaintiff, while performing his duty, coupled a car attached to defendant's locomotive, while not in motion, and the injury was caused by the sudden movement of the locomotive by the engineer, without a signal from the plaintiff, contrary to practice, though there was evidence of contributory negligence, its establishment would not be a complete defense, under subsection (c) of this section, and upon a motion to nonsuit, evidence that the engineer properly acted on the signal of another employee will not be considered. Lamm v. Atlantic Coast Line R. Co., 183 N. C. 74, 110 S. E. 659 (1922).

Federal Statute. — The rule under the federal statute is substantially the same as that prescribed by subsection (c) of this section. Contributory negligence is not a complete bar to the recovery of damages by an employee of a railroad company in an action brought under the Federal Employers' Liability Act, the admeasurement being that of comparative negligence by which the jury, under conflicting evidence, reduces the recovery in accordance with the relative negligence of the employee. Moore v. Atlantic Coast Line R. Co., 185 N. C. 189, 116 S. E. 409 (1923); Ballew v. Asheville, etc., R. Co., 186 N. C. 704, 120 S. E. 334 (1923); Hinnant v. Tidewater Power Co., 187 N. C. 288, 121 S. E. 540 (1924); Cobia v. Atlantic Coast Line R. Co., 188 N. C. 487, 125 S. E. 18 (1924).

V. CONTRACTS AND RULES EXEMPTING FROM LIABILITY.

Accepting Benefit from Relief Department.—A relief department for providing hospital care for employees, contributed to by the employees and the company and under the control and management of the company, is but an agency of the company; and a stipulation in the contract with its employee that in the case of accident he must accept the benefit of the contract and release the company from liability, is prohibited by the provisions of subsection (e) of this section. Barden v. Atlantic Coast Line R. Co., 152 N. C. 318, 67 S. E. 971 (1910); Herring v. Atlantic Coast Line R. Co., 168 N. C. 555, 84 S. E. 863 (1915).

VI. LOGGING ROADS AND TRAMROADS.

Editor's Note. — Before the enactment of subsection (f) of this section provisions of subsection (a) were held, by judicial construction, to apply to logging roads and tramroads. See Roberson v. Greenleaf-Johnson Lumber Co., 154 N. C. 328, 70 S. E. 630 (1911); Buckner v. Madison County R. Co., 164 N. C. 201, 80 S. E. 225 (1913).

However, in Williams v. Kinston Mfg. Co., 175 N. C. 226, 95 S. E. 366 (1918), it was held that a logging road was not a common carrier within the meaning of subsection (c), and that the doctrine of comparative negligence was not applicable to actions for injuries sustained by employees of such roads. This decision seems to have engendered the legislative enactment enunciated by subsection (f), which was passed in 1919.

The provisions of subsections (a) and (c) are applicable to tram or logging roads under the provisions of subsection (f). Sampson v. Jackson Bros. Co., 203 N. C. 413, 166 S. E. 181 (1932). See Moore v. Rawls, 196 N. C. 125, 144 S. E. 552 (1928).

In Lilley v. Interstate Cooperage Co., 194 N. C. 250, 139 S. E. 369 (1927), the rule of subsection (f) as to tram railroads was applied, and it was held that subsection (c) was operative as to such railroads.

Comparative Negligence Rule Applies. —Contributory negligence is no longer a bar to injuries received in the operation of a logging road, but such negligence mitigates damages. In other words, comparative negligence is now, under the law, applicable to logging roads. Moore v. Rawls, 196 N. C. 125, 144 S. E. 552 (1928), citing McKinish v. Lumber Co., 191 N. C. 836, 133 S. E. 163 (1926).

The employee must be engaged in duties connected with or incidental to the operation of such roads. Gurganous v. Camp Mfg. Co., 204 N. C. 525, 168 S. E. 833 (1933).

Narrow-Gauge Logging Road.—A small narrow-gauge road running through the woods and used for the purpose only of transporting logs to the defendant's sawmill, with the cars loaded with logs pulled up a grade by means of a steam skidder, the wire cables operating around a drum upon the skidder, is a logging road within the intent and meaning of subsection (f) of this section and an employee negligently injured by such company is not barred of his right to recover damages when caused by a fellow servant; and contributory negligence is only considered in determination of the amount of damages the injured employee has sustained. Stewart v. Blackwood Lumber Co., 193 N. C. 138, 136 S. E. 385 (1927); Brooks v. Suncrest Lumber Co., 194 N. C. 141, 138 S. E. 532 (1927).

§ **62-243. Violation of rules causing injury; damages.** — If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this chapter shall be brought within one (1) year after the commission of the alleged wrong or injury. (1899, c. 164, s. 16; Rev., s. 1091; C. S., s. 1110; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ **62-244. Certain employees to wear badges.**—Every conductor, baggage-master, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office. (1871-2, c. 138, s. 30; Code, s. 1958; Rev., s. 2604; C. S., s. 3414; 1963, c. 1165, s. 1.)

Cross Reference.—As to badge of railroad police, see § 74A-3.

§ 62-245. Duty to receive and forward freight tendered; penalty; regulations; charges. — (a) Agents or other officers of railroad companies whose duty it is to receive freight shall receive all articles of the nature and kind received by such carriers for transportation whenever tendered at a regular depot, station, terminal or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding. The railroad company shall forward such freight or cars by the route selected by the person tendering the freight under the existing laws. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.

(b) The Commission shall make reasonable and just rules:

(1) For the handling of freight and baggage at stations of all railroad companies.

(2) As to charges by any person engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations.

(c) The railroad company represented by any person unlawfully refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars ($50.00) for each day such carrier refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight. (Code, s. 1964; 1899, c. 164, s. 2, subsecs. 2, 7; 1903, cc. 444, 693; Rev., ss. 1094, 2631; C. S., ss. 1053, 3515; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross References.—As to power of Utilities Commission to prevent discrimination, see § 62-140. As to venue of action against railroad, see § 1-81. As to regulation of shipment of inflammable substances and explosives, see § 62-211. As to penalty for failure to deliver freight upon tender of payment for carriage, see § 62-201.

This section is constitutional as applied to intrastate shipments. Corbett v. Atlantic Coast Line R. Co., 205 N. C. 85, 170 S. E. 129 (1953).

Intrastate Shipments. — The penalty imposed by this section is not a burden upon interstate commerce when shipments are intrastate. Wampum Cotton Mills v. Carolina, etc., R. Co., 150 N. C. 612, 64 S. E. 588 (1909).

Interstate Shipments.—In Reid v. Southern R. Co., 150 N. C. 753, 64 S. E. 874 (1909), it was held that the penalty provided for by the provisions of this section would apply to interstate shipments, the same not being a burden on interstate commerce. In reviewing the same case the United States Supreme Court reversed this decision and held that the section could not apply to interstate shipments. Southern Ry. Co. v. Reid, 222 U. S. 424, 32 S. Ct. 140, 56 L. Ed. 257 (1912).

Section Strictly Construed. — This is a penal statute and must be strictly construed. Cox v. Atlantic Coast Line R. Co., 148 N. C. 459, 62 S. E. 556 (1908).

Requisites of Valid Tender.—This section provides that the tender be made at a regular station and that the articles tendered be of the nature and kind received by the carrier for transportation, and it is necessary in an action for the penalty to show that the character of the shipment and place of tender are such as fall within its provisions. Olive v. Atlantic Coast Line R. Co., 152 N. C. 279, 67 S. E. 583 (1910).

Same—Sufficiency of Allegations. — A complaint alleging that plaintiff tendered to a carrier at a certain station a certain quantity of loose lumber for shipment, etc., which the defendant wrongfully and unlawfully refused to receive, states a good cause of action, since it would be inferred, to be thereafter shown by proof, that this station referred to was a regular station, and that loose lumber was an article usually received by the carrier. Olive v. Atlantic Coast Line R. Co., 152 N. C. 279, 67 S. E. 583 (1910).

Meaning of "Whenever Tendered."—The words "whenever tendered" can only be qualified by supplying the ellipsis "within the usual hours adopted by the public for the transaction of such business at the place where the tender is made." Alsop v. Southern Express Co., 104 N. C. 278, 10 S. E. 297 (1889).

Effect of Carrier's Regulation as to Time of Tender.—Where money was tendered to the agent of an express company at a regular station for shipment at 2 o'clock P. M., and the trains carrying express freight in the direction of the place to which it was to be consigned passed only at 12:55 o'clock P. M. each day, a regulation of the company that money would be received for shipment only on the morning before the train on which it was to be transported passed would not protect the company in an action brought to recover a penalty incurred by violation of this section. Alsop v. Southern Express Co., 104 N. C. 278, 10 S. E. 297 (1889).

Tender of Freight Eight Minutes before Train. — Where the plaintiff tendered to the defendant thirty crates of strawberries at a small station requiring only one agent to attend to the various duties of express, telegraph, and railroad agent, and the tender was made at the time the train for which the shipment was intended was seen approaching the depot, about eight minutes before its arrival, a charge of the court that it was for the jury to determine whether, under the circumstances, the tender of the shipment for that train was in time was not open to plaintiff's objection. Shaw v. Southern Express Co., 171 N. C. 216, 88 S. E. 222 (1916).

Requisites for Daily Penalty.—In order for the daily penalty to attach to the carrier for continually refusing to accept freight for shipment under the provisions of this section, it is necessary for actual or constructive tender of the freight to be made to the carrier each day; and where cattle are the subject of shipment, evidence that the shipment had been refused and that the shipper kept the cattle near the depot and told the defendant's agent thereof, and that he would deliver them when notified that the company would receive them is insufficient except as to the first penalty. Bane v. Atlantic Coast Line R. Co., 171 N. C. 328, 88 S. E. 477 (1916).

When the common carrier permits a shipper to load a car with his goods and refuses to receive it for shipment or to issue a bill of lading, it is a refusal to receive the goods for shipment, under this section; and when the shipper leaves the goods in the car, with request for shipment, and by his conduct, understood by the railroad, makes his tender continuous, each day's delay is a separate refusal, within the meaning of the statute, to which the penalty will apply. Garrison v. Southern R. Co., 150 N. C. 575, 64 S. E. 578 (1909).

Same—Placing Goods in Depot.—Placing a shipment of goods in the depot of the carrier, prepared for and with request for shipment, and thus leaving them there, makes each day's delay by the carrier "a refusal to ship," under this section, and the carrier, thus refusing, is responsible for the penalty. Burlington Lumber Co. v. Southern R. Co., 152 N. C. 70, 67 S. E. 167 (1910).

Meaning of "Under Existing Laws."—The words "under the existing laws," in this section, qualify the word "forward," and are used in reference to the rules governing the legal relations of consignor, consignee and the connecting lines. Alsop v. Southern Express Co., 104 N. C. 278, 10 S. E. 297 (1889).

Who Is the "Party Aggrieved."—The shipper of the goods is the "party aggrieved," and is the one entitled to sue for the penalty prescribed in this section which arises from the wrongful refusal of the carrier's agent to accept the goods for transportation. Reid v. Southern R. Co., 149 N. C. 423, 63 S. E. 112 (1908).

Same—Consignee of Goods Shipped on Approval.—A consignee to whom goods are shipped on approval owes a duty to the consignor to return them if they are unsatisfactory, and he must do so to relieve himself of liability to the consignor; and he is the party aggrieved, under this section, and may maintain his action thereunder for the penalty prescribed upon the refusal of the carrier to accept the goods for shipment. Burlington Lumber Co. v. Southern R. Co., 152 N. C. 70, 67 S. E. 167 (1910).

Same—Agent of Attaching Creditor. — The penalty prescribed by this section is for the person who is interested in having the goods shipped, and whose legal right in respect thereto is denied; and a person may not maintain an action for the penalty, as the party aggrieved, who has no right or interest in the goods tendered by him for shipment, except as agent or attorney for an attaching creditor and surety on his attachment bond, after the debt has been paid and the goods released. McRackan v. Atlantic Coast Line R. Co., 150 N. C. 331, 63 S. E. 1042 (1909).

Goods Not Delivered to Carrier.—When the plaintiff did not deliver the goods to the carrier, because they could not be transported by a train then getting ready to leave the station, but carried them back and shipped them the next day, a nonsuit should be allowed. Cox v. Atlantic Coast Line R. Co., 148 N. C. 459, 62 S. E. 556 (1908).

Tender of Perishable Goods for Train Not Carrying Accommodations Therefor.—An express company is not liable for damages and the statutory penalties of this section for refusing to receive a shipment of thirty crates of strawberries for a certain train not carrying accommodations for shipments of this character, though it had taken, on occasion, a few berries thereon for the shipper, where the lack of accommodations was known to the public, and to the shipper, and accommodations on other daily trains were specially provided. Shaw v. Southern Express Co., 171 N. C. 216, 88 S. E. 222 (1916).

Refusal to Accept Loose Hay. — Where the Corporation Commission had authorized and fixed and approved the charges for the transportation of baled hay, without expressly requiring its acceptance by the carrier when unbaled or loose, and by express provision it did not require the carrier to receive "cotton or other merchandise and warehouse the same unless the articles offered are in good shipping condition, etc.," the carrier was not liable, for the penalty prescribed by this section, for refusing to receive for shipment a carload of loose hay, such shipments evidently being of such a character as to endanger not only the property of the carrier, but that of others received by the carrier for shipment. Tilley v. Norfolk & Western R. Co., 162 N. C. 37, 77 S. E. 994 (1913).

Embargo on Consignee's Freight. — A railroad company may show, in defense to an action for refusal to receive goods for shipment when tendered, such matters as would excuse its failure to do so at common law, unavoidable conditions then existing, over which it had no control; when a carrier has refused a shipment of the nature and kind it was its business to receive, and which it could have received at the point tendered without working a hardship or oppression, it is no defense for it to show that, for the reason of the consignee's blocking the freight yards at destination, an embargo had been placed by the railroad on shipments tendered to be forwarded to him there. Garrison v. Southern R. Co., 150 N. C. 575, 64 S. E. 578 (1909).

Embargo by Connecting Carrier.—The penalty imposed by this section is enforceable against a railroad company refusing to receive freight when tendered, though to reach the destination it was necessary for another road to receive and transport the freight beyond the junctional point; and it is no valid excuse that the connecting line had laid an embargo on the consignee, for it was the duty of the initial carrier to transport the goods and make a tender to the connecting line to be relieved of the penalty. Wampum Cotton Mills v. Carolina & Northwestern R. Co., 150 N. C. 612, 64 S. E. 588 (1909).

When Rate Unknown to Carrier. — Where the defendant carrier refused to receive for shipment goods tendered to it, basing its right to refuse upon the ground that it was necessary for the shipment to go over lines of connecting carriers in order to reach its destination and that no joint rate had been made, and the plaintiff offered to prepay the freight, and asked for a bill of lading, it was the duty of the defendant to accept the shipment, forward it to its connecting line; and to use reasonable means of ascertaining the rate of freight, by wire if necessary, for the issuance of a through bill of lading. Reid v. Southern R. Co., 153 N. C. 490, 69 S. E. 618 (1910).

In an action to recover the penalties alleged to have been incurred under this section, for refusing to receive freight for transportation, where the plaintiff delivered freight for shipment at the defendant's station and tendered the charges, and an agent received the freight for storage, but refused to give a bill of lading because he did not know the freight rates, and kept the freight twelve days, there was a refusal "to receive for transportation," and the action is brought under the proper statute. Twitty v. Southern R. Co., 141 N. C. 355, 53 S. E. 957 (1906).

Mismarking of Part of Shipment. — In an action to recover a penalty against a carrier for failing to ship one of four packages consigned for shipment under a single bill of lading, the defendant is estopped to claim as a defense that the mismarking of three of the packages was a sufficient excuse for failing to ship the fourth. Grocery Co. v. Sou. R. Co., 136 N. C. 396, 48 S. E. 801 (1904).

Freight Not Consigned to Regular Station.—A refusal of the carrier's agent to receive, at its depot, freight, and transportation charges therefor, destined for a point on the carrier's road which was only a siding, and was not a regular station, is wrongful, and subjects the carrier to the penalty prescribed by this section, when the refusal is on the ground that the agent did not know where the given destination was, but it appears that he could have ascertained that freight was ordinarily shipped there on way bills made out to a regular station on the carrier's road some two miles distant therefrom. Reid v. Southern R. Co., 149 N. C. 423, 63 S. E. 112 (1908).

Conclusiveness of Referee's Findings. — Where in an action to recover the prescribed penalties under this section the referee finds upon ample evidence, in a hearing in which no error of law is committed, that the shipment came within a certain classification, and that the shipper tendered the correct amount for such classification, and the finding is approved by the trial court, such finding is conclusive on appeal, and the carrier may not successfully contend that the shipment came within another classification for which higher freight charges were prescribed, and where a higher tariff has been charged on one shipment the shipper is entitled to recover the excess paid. Corbett v. Atlantic Coast Line R. Co., 205 N. C. 85, 170 S. E. 129 (1933).

Sufficiency of Evidence.—Evidence that the shipper's contract to deliver certain merchandise was canceled because of the carrier's wrongful refusal to accept the merchandise for shipment is sufficient to support the referee's finding of actual damages, profits which would have been certainly realized but for the carrier's wrongful refusal of the shipment being recoverable under this section. Corbett v. Atlantic Coast Line R. Co., 205 N. C. 85, 170 S. E. 129 (1933).

§ 62-246. Partial charges for partial deliveries. — Whenever any freight of any kind shall be received by any railroad company in this State to be delivered to any consignee in this State, and a portion of the same shall not have been received at the place of destination, it shall not be lawful for such carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. Such carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interfering with or depriving a consignor, or other person having authority, of his rights of stoppage in transit. (1893, c. 495; Rev., s. 2641; C. S., s. 3521; 1963, c. 1165, s. 1.)

§ 62-247. Commission to establish and regulate stations for freight and passengers; abandonment of station or diminution of accommodations.—(a) The Commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations or terminals by any railroad company, to require the erection of depot accommodations commensurate with such business and revenue, and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The Commission shall not require any railroad company to establish any station nearer to another station than five miles.

(b) The Commission is empowered and directed to require a change of any station or terminal or the repair, addition to, or change of any station or terminal by any railroad company in order to promote the security, convenience and accommodation of the public.

(c) A railroad company which has established and maintained for a year or more a passenger station or freight depot at a point upon its road or route shall not abandon such station or depot, nor substantially diminish the accommodation furnished by the stopping of trains, except by consent of the Commission. Freight or passenger depots may be relocated upon the written approval of the Commission. (1899, c. 164, s. 2, subsecs. 12, 13, ss. 19, 20; Rev., ss. 1097, 1098; 1913, c. 155; C. S., ss. 1040, 1041, 1051; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference.—As to power of Utilities Commission to regulate building of shelters at railroad division points, see § 62-229.

Liberal Construction.—Subsection (b) of this section is of a remedial nature, and will be liberally construed by the courts in favor of the exercise of the authority conferred. State v. Southern R. Co., 185 N. C. 435, 117 S. E. 563 (1923). See State v. Southern R. Co., 196 N. C. 190, 145 S. E. 19 (1928).

Power to Require and Regulate Depots.—The Commission can order new depots established wherever they are needed, and has the lesser power to require proper facilities at those already established. Corporation Comm. v. Railroad, 139 N. C. 126, 51 S. E. 793 (1905).

May Require Track Scales.—The Commission is empowered to require "depot accommodations commensurate with such business and revenue," which justifies the Commission in requiring "track scales" at points along the line. Corporation Comm. v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793 (1905).

The court, or the jury upon proper instructions, as the case may be, should pass upon the reasonableness and necessity of an order of the Commission requiring track scales to be put in. Corporation Comm. v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793 (1905).

Railroad Not Released from Private Contract.—The limitation on the powers of the Commission to require common carriers to establish stations within five miles of each other does not release the carriers from a contract, with an individual, to maintain a flag stop within the bounds of his plantation. Parrott v. Atlantic, etc., R. Co., 165 N. C. 295, 81 S. E. 348 (1914).

Orders Subject to Review by the Courts.—The power of the Commission, under this section, cannot be unreasonably exercised, and its orders are subject to review by the superior court and the Supreme Court. Corporation Comm. v. Atlantic Coast Line R. Co., 139 N. C. 126, 51 S. E. 793 (1905).

§§ 62-248 to 62-258: Omitted.

ARTICLE 12.

Motor Carriers.

§ 62-259. Additional declaration of policy for motor carriers.—In addition to the declaration of policy set forth in § 62-2 of article 1 of chapter 62, it is declared the policy of the State of North Carolina to preserve and continue all motor carrier transportation services now afforded this State; and to provide fair and impartial regulations of motor carriers in the use of the public highways in such a manner as to promote, in the interest of the public, the inherent advantages of highway transportation; to promote and preserve adequate economical and efficient service to all the communities of the State by motor carriers; to encourage and promote harmony among all carriers and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers; to foster a coordinated State-wide motor carrier service; and to conform with the national transportation policy and the federal motor carriers acts insofar as the same may be practical and adequate for application to intrastate commerce. (1947, c. 1008, s. 1; 1949, c. 1132, s. 2: 1963, c. 1165, s. 1.)

Local Modification.—Cabarrus: 1947, c. 532; 1949, c. 1132, s. 39.

Editor's Note. — This article combines the Bus Act of 1949, Session Laws 1949, c. 1132, and the North Carolina Truck Act, Session Laws 1947, c. 1008. For a discussion of the Bus Act of 1949, see 27 N. C. Law Rev. 467. As to application of former article of similar import, see City Coach Co. v. Gastonia Transit Co., 227 N. C. 391, 42 S. E. (2d) 398 (1947).

Purpose of Truck Act. — The North Carolina Truck Act was enacted to preserve and continue motor carrier transportation services. State v. Fredrickson Motor Exp., 232 N. C. 178, 59 S. E. (2d) 580 (1950).

Policy of the Bus Act Stated. — The policy of the law controlling the granting of bus franchises is to provide adequate, economical and efficient bus service at reasonable cost to all communities of the State, without discrimination, undue privileges or advantages or unfair or destructive competitive practices, all to the end of promoting the public interest. State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951).

§ 62-260. Exemptions from regulations.—(a) Nothing in this chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

(1) Transportation of passengers or property for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;

(2) Transportation of passengers by taxicabs when not carrying more than six (6) passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than six (6) passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between fixed termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;

(3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;

(4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;

(5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;

(6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services;

(7) Transportation of bona fide employees of an industrial plant to and from their regular employment;

(8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;

(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;

(10) Transportation of newspapers;

(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;

(12) Transportation for and under the control of co-operative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, § 1141(j), or under the State Co-operative Marketing Act, chapter 54, subchapter 5, General Statutes of North Carolina, as amended, or for any federation of such co-operative associations; provided, such federation possesses no greater powers or purposes than such co-operative associations;

(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;

(14) Transportation of raw products of the forest, including firewood, logs, crossties, stavebolts, pulpwood, and rough lumber, but not including manufactured products therefrom;

(15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;

(16) Transportation by a bona fide private carrier, as defined in § 62-3 (22);

(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.

(b) The Commission shall have jurisdiction to fix rates of carriers of passengers operating as described in (5) and (8) of subsection (a) of this section in the manner provided in this chapter, and shall have jurisdiction to hear and determine controversies with respect to extensions and services, and the Commission's rules of practice shall include appropriate provisions for bringing such controversies before the Commission and for the hearing and determination of the same; provided nothing in this paragraph shall include taxicabs.

(c) The Commission may conduct investigations to determine whether any person purporting to operate under the exemption provisions of this section is, in fact, so operating, and make such orders as it deems necessary to enforce compliance with this section.

(d) The venue for any action commenced to enforce compliance with the terms of this article against any person purporting to operate under any of the exemptions provided in this section shall be in one of the counties of the judicial district wherein the violation is alleged to have taken place and such person shall be entitled to trial by jury.

(e) None of the provisions of this section nor any of the provisions of this chapter shall be construed so as to prohibit or regulate the transportation of property by any motor carrier when the movement is within a municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities, as defined by the Commission. The Commission shall have the power in its discretion, in any particular case, to fix the limits of any such zone. Nothing herein shall be construed as an abridgment of the police powers of any municipality over such operation wholly within any such municipality. Nothing in this chapter shall be construed to prohibit or regulate the transportation of household effects of families from one residence to another by persons who do not hold themselves out as being, and are not generally engaged in the business of transporting such property for compensation. (1947, c. 1008, s. 4; 1949, c. 1132, s. 5; 1951, c. 987, s. 1; 1953, c. 1140, s. 2; 1955, c. 1194, ss. 1, 2; 1959, c. 102; c. 639, s. 14; 1963, c. 1165, s. 1.)

The Utilities Commission is not vested with power to require the operators of services enumerated in subdivisions (1) to (8) of subsection (a) to obtain a franchise from it and does not have any supervision or jurisdiction over such operation, except the operations set forth in subdivisions (5) and (8) of subsection (a), and as to them it retains jurisdiction to fix rates and "to hear and determine controversies with respect to extensions and services." Winston-Salem v. Winston-Salem City Coach Lines, Inc., 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Commission Has Jurisdiction to Determine Exemptions.—The Commission has jurisdiction to determine whether or not the actual operations of a carrier are under the exemptive provisions of this section. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Jurisdiction of Commission over City Bus Lines. — The Commission has been given specific authority to fix city bus fares. State v. Greensboro, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

An intracity carrier, holding a certificate of exemption issued by the Commission and a franchise from the city or town in which it operates, is exempt from control of the Commission, except as to rates and controversies with respect to extensions and services. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Any provisions with respect to rates and services contained in a franchise contract between a utilities company and a municipal corporation, authorizing the utilities company to transport passengers over its streets, are subject to the orders of the Utilities Commission in respect thereto. Winston-Salem v. Winston-Salem City Coach Lines, Inc., 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Same — Dispute as to Curtailment of Services by Bus Carrier.—Where a municipality has granted a franchise to a utilities company to operate passenger buses over its streets, the parties may mutually agree upon extensions and services, changes in routes, or curtailment of services, when in the opinion of the governing board of the municipality such changes are, under the existing conditions, for the best interest of all concerned, including the public. However, when the parties are unable to agree to a proposed curtailment of existing services, the matter is within the exclusive jurisdiction of the Utilities Commission and the municipality may not enjoin the utility from the proposed curtailment of services, although the utility may not change its schedules or curtail its services unless given authority to do so by the Utilities Commission. Winston-Salem v. Winston-Salem City Coach Lines, Inc., 245 N. C. 179, 95 S. E. (2d) 510 (1956).

No Territorial Limitations on Intracity Carrier When Subsections (a) (1) and (a) (6) Apply.—An exempted intracity carrier under subsection (a) (8) has no territorial limitations as to the transportation of passengers under subsections (a) (1) and (a) (6) of this section, where the request for such services arises within the area for which such carrier holds a certificate of exemption from the Commission and a franchise from the municipality in which it operates or within any additional zone or zones adjacent thereto which have been fixed by the Commission. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Operations Devoted Exclusively to Transportation of Employees to and from Work. — The North Carolina Utilities Commission does not have regulatory supervision of operations devoted exclusively to the transportation by motor vehicle of the bona fide employees of industrial plants to and from the places of their employment even in cases where the persons conducting such operations are engaged at the same time or at other times in carrying on the callings of common carriers by motor vehicle. State v. Carolina Coach Co., 236 N. C. 583, 73 S. E. (2d) 562 (1952).

Transportation to and from Federal Military Reservation. — This section exempts from the regulation of the Utilities Commission carriers in intrastate commerce transporting passengers for hire to and from federal military reservations or bases only if such carriers have been procured by the United States government to carry passengers for it, or the transportation of such passengers is under the control of the United States. Bryant v. Barber, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

As to motor vehicles carrying mail under former statute, see Winborne v. Browning, 206 N. C. 557, 174 S. E. 579 (1934).

Transportation of Athletic Teams and School Bands.—While it is true that the statute which governs the operation of school buses makes no provision one way or the other for the transportation of athletic teams or school bands, it is equally true that school bands and athletic teams are under the control of the school authorities. Therefore the board controlling such activities would have the inherent right to contract for such transportation as might be necessary to transport its athletic teams and its bands to and from such events have been scheduled under the supervision of school authorities, and such transportation would be exempt under subsection (a) (1) of this section. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Action by Competing Carrier against Exempted Carrier Violating Section. — When an exempted carrier is operating in violation of the exemptive provisions of this section, any other carrier adversely affected thereby may institute an action in the superior court against such exempted carrier, pursuant to the provisions of subsection (d) of this section and § 62-279. State v. McKinnon, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

§ 62-261. Additional powers and duties of Commission applicable to motor vehicles.—The Commission is hereby vested with the following powers and duties:

(1) To supervise and regulate common carriers of passengers by motor vehicle and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage, newspapers, mail and light express, uniform systems of accounts, records and reports and preservation of records.

(2) To supervise the operation of passenger bus stations in any manner necessary to promote harmony among the carriers using such stations and efficiency of service to the traveling public.

(3) To prescribe qualifications and maximum hours of service of drivers and their helpers, and rules regulating safety of operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Utilities Commission may adopt and enforce the rules and regulations adopted and promulgated by the Interstate Commerce Commission with respect thereto, insofar as the Utilities Commission finds the same to be practical and advantageous for application in this State and not in conflict with this article. In order to promote safety of operation of motor carriers, the Utilities Commission may avail itself of the assistance for any other agency of the State having special knowledge of such matters and it may make such investigations and tests as may be deemed necessary to promote safety of equipment and operation of vehicles upon the highways.

(4) For the purpose of carrying out the provisions of this article, the Utilities Commission may avail itself of the special information of the State Highway Commission in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; and the State Highway Commission, upon request of the Utilities Commission, shall furnish such information.

(5) The Commission may, without prior notice and hearing, make and enter any order, rule, regulation, or requirement, not affecting rates, upon unanimous finding by the Commission of the existence of an emergency and make such order, rule, regulation or requirement effective upon notice given to each affected motor carrier by registered mail, or by certified mail, pending a hearing thereon as provided in this subdivision. It shall not be necessary for the Commission to give notice to the carriers affected or to hold a hearing prior to a revision in the rules regarding procedures to be followed in filing rates. Any such emergency order, rule, regulation or requirement shall be subject to continuation, modification, change, or revocation after notice and hearing and all such emergency orders, rules, regulations and requirements shall be supplanted and superseded by any final order, rule regulation or requirement entered by the Commission.

(6) The Commission shall regulate brokers and make and enforce reasonable requirements respecting their licenses, financial responsibility, accounts, records, reports, operations and practices.

(7) The Commission and its duly authorized inspectors and agents shall have authority at any time to enter upon the premises of any motor

carrier, subject to the provisions of this article, for the purpose of inspecting any motor vehicles and equipment used by such motor carriers in the transportation of passengers, and to prohibit the use by any motor carrier of any motor vehicle or parts thereof or equipment thereon adjudged by such agents and inspectors to be unsafe for use in the transportation of passengers upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier in actual use upon the highways in the transportation of passengers to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors shall also have the right to stop any motor vehicle which vehicle, parts or equipment are imminently dangerous, stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers and to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers by a motor carrier subject to the provisions of this article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors. It shall be the duty of all inspectors and agents of the Commission to make a written report, upon a form prescribed by the Commission, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of the laws of this State or of the orders, rules and regulations of the Commission.

(8) To determine, upon its own motion, or upon motion by a motor carrier, or any other party in interest, whether the transportation of property in intrastate commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation in this State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this article, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in intrastate commerce performed by the carrier or class of carriers designated in such certificate will be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regu-

lation by the Commission of intrastate transportation by motor carriers in effectuating the policy declared in this chapter. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in intrastate commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this paragraph, except after reasonable opportunity for hearing to interested parties.

(9) To inquire into the management of the business of motor carriers and into the management of business of persons controlling, controlled by or under common control with, motor carriers to the extent that such persons have a pecuniary interest in the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this article.

(10) To relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules, regulations and orders designed and calculated to minimize the dangers attending transportation on the highways of all commodities including explosives or highly inflammable or combustible liquids, substances or gases.

(11) The Commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term "common carrier by motor vehicle" or contract carrier by motor vehicle as the special nature of the service performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this article, to be observed by such carriers so classified or grouped, as the Commission deems necessary or desirable in the public interest. (1947, c. 1008, s. 5; 1949, c. 1132, s. 6; 1953, c. 1140, s. 5; 1957, c. 65, s. 11; c. 1152, s. 7; 1961, c. 472, s. 9; 1963, c. 1165, s. 1.)

Cross Reference.—As to revocation of license plates for violation of chapter, see § 62-278.

Rules and Regulations.—The Commission may impose upon the holder of a permit any reasonable rules and regulations with respect to the operations thereunder which are now in effect or which may be adopted hereafter for the regulation of motor vehicle carriers performing similar service. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Commission Must Acquire Certificate Holder to Render Services Contemplated.—The Truck Act of 1947 and the amendments thereto placed upon the Commission the responsibility of requiring the holder of the certificate to render the service contemplated. State v. Colter, 259 N. C. 269, 130 S. E. (2d) 385 (1963).

A substantial rather than a simulated performance is required to support a bona fied carrier operation. State v. Colter, 259 N. C. 269, 130 S. E. (2d) 385 (1963).

Contracts Subject to Commission's Authority. — Contracts between carriers affecting service to the public are subject to the Commission's regulatory authority. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Contract When Approved Is Order of Commission.—A contract between public utilities, when formally approved by the Commission, is in effect an order of the Commission binding on each of the parties. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

The interchange of freight between an intrastate and an interstate carrier, even though the property is being moved in interstate commerce, is left to the state commissions. State v. Fox, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

§ 62-262. Applications and hearings.—(a) Except as otherwise provided in §§ 62-260 and 62-265, no person shall engage in the transportation of passengers or property in intrastate commerce unless such person shall have applied to and obtained from the Commission a certificate or permit authorizing such operations, and it shall be unlawful for any person knowingly or wilfully to operate in intrastate commerce in any manner contrary to the provisions of this article, or of the rules and regulations of the Commission. No certificate or permit shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(b) Upon the filing of an application for a certificate or a permit, the Commission shall, within a reasonable time, fix a time and place for hearing such application. For bus applications, the Commission shall cause notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers holding certificates or permits to operate in the territory proposed to be served by the application, and to other motor carriers who have pending applications to so operate. The Commission shall from time to time prepare a truck calendar containing notice of such hearings, a copy of which shall be mailed to the applicant and to any other persons desiring it, upon payment of charges to be fixed by the Commission. The notice or calendar herein required shall be mailed at least twenty (20) days prior to the date fixed for the hearing, but the failure of any person, other than applicant, to receive such notice or calendar shall not, for that reason, invalidate the action of the Commission in granting or denying the application.

(c) The Commission may, in its discretion, except where a regular calendar providing notice is issued, require the applicant to give notice of the time and place of such hearing together with a brief description of the purpose of said hearing and the exact route or routes and authority applied for, to be published not less than once each week for two successive weeks in one or more newspapers of general circulation in the territory proposed to be served. The Commission may in its discretion require the applicant to give such other and further notice in the form and manner prescribed by the Commission to the end that all interested parties and the general public may have full knowledge of such hearing and its purpose. If the Commission requires the applicant to give notice by publication, then a copy of such notice shall be immediately mailed by the applicant to the Commission, and upon receipt of same the chief clerk shall cause the copy of notice to be entered in the Commission's docket of pending proceedings. The applicant shall, prior to any hearing upon his application, be required to satisfy the Commission that such notice by publication has been duly made, and in addition to any other fees or costs required to be paid by the applicant, the applicant shall pay into the office of the Commission the cost of the notices herein required to be mailed by the Commission.

(d) Any motor carrier desiring to protest the granting of an application for a certificate or permit, in whole or in part, may become a party to such proceedings by filing with the Commission, not less than ten (10) days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application, in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render either alone or in conjunction with other motor carriers, the service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the applicant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to hear the application and make the necessary findings of fact and issue or decline to issue the certificate or permit applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application, and with permission of the Commission may be accorded the right to examine and cross-examine witnesses.

(e) If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

(f) No certificate for the transportation of passengers shall be granted to an applicant proposing to serve a route already served by a previously authorized motor carrier unless and until the Commission shall find from the evidence that the service rendered by such previously authorized motor carrier or carriers on said routes is inadequate to meet the requirements of public convenience and necessity; and if the Commission shall find that the service being rendered by such certificate holder or holders on said routes is inadequate to meet the requirements of public convenience and necessity, such certificate holder or holders who have protested the application as provided in subsection (d) of this section, shall be given reasonable time to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate on such routes, unless the Commission finds that the previously authorized carrier, filing such protest, is either financially unable, or otherwise unqualified, or is unwilling to render, on a continuing basis, the service applied for or the service found by the Commission to meet the requirements of public convenience and necessity. In all cases in which applications affect local intracity bus service, the Commission shall give consideration to all interests involved and make appropriate provision for the protection thereof, and to that end local intracity operators shall have the right to be heard as protestants, or intervenors.

(g) A certificate for the transportation of passengers may include authority to transport in the same vehicle with passengers the baggage of such passengers, newspapers, express parcels or United States mail when authorized so to do by the government of the United States of America; or to transport baggage of passengers in a separate vehicle. The Commission, in its discretion, may require through joint routes and rates for the transportation of newspapers and express parcels.

(h) Common carriers by motor vehicle transporting passengers under a certificate issued by the Commission may operate to any place in this State, pursuant to charter party or parties, trips originating on such common carrier's authorized routes or in the territory served by its routes under such reasonable rules and regulations as the Commission may prescribe.

(i) If the application is for a permit, the Commission shall give due consideration to:

(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,

(4) Whether the applicant is fit, willing and able to properly perform the service proposed as a contract carrier,

(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this chapter; and

(6) Other matters tending to qualify or disqualify the applicant for a permit.

(j) After the issuance of a certificate or permit for the transportation of passengers, as provided in this section, such certificate or permit may thereafter be amended, changed or modified, by requiring the holder to furnish more or less transportation service, or by changing the routes over which service has been authorized, or by imposing other reasonable terms, conditions, restrictions, and limitations as public convenience and necessity or reasonable regulation of traffic upon the highways may require; provided, that the procedure in all such cases as to notice and hearing shall be the same as provided in this section for the issuance of a certificate or permit.

(k) The Commission shall by general order, or rule, having regard for the public convenience and necessity, provide for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate. (1947, c. 1008, s. 11; 1949, c. 1132, s. 10; 1953, c. 825, s. 3; 1957, c. 1152, ss. 8, 9; 1959, c. 639, s. 11; 1963, c. 1165, s. 1.)

The procedure before the Commission is more or less informal, and is not as strict as in civil cases, nor is it confined by technical rules; substance and not form is controlling. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

The power of the Commission is not restricted to the proceedings as commenced, but it may enlarge the scope of the inquiry beyond the issue raised by the pleadings where the parties to be affected are before the Commission, participate in the proceedings, have full opportunity to be heard, and are not misled as to the purpose of the hearing. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

The Commission is not confined to the immediate scope of the pleadings on file. It may enlarge the scope of the inquiry, and where the parties to be affected are before it, participate in the inquiry and make defense, they cannot complain of a departure from the pleadings. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Application for New Authority Treated as Motion in Prior Cause.—An application for a new authority to carry passengers between two municipalities of the state along a new route made feasible by the improvement or construction of highways could be treated by the Utilities Commission as a motion in a prior cause in which the Commission approved an agreement of the carriers in regard to their respective services between the cities provided the carriers affected were given notice and an opportunity to be heard. The question of whether the prior order of approval could be collaterally attacked was thus obviated. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

The convenience and necessity required by this section are those of the public and not of an individual or individuals. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

The doctrine of convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

"Necessity" means reasonably necessary and not absolutely imperative. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Any service or improvement which is desirable for the public welfare and highly important to the public convenience may be properly regarded as necessary. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

If a new service is necessary, and if there are carriers already in the field, there is always the vital question (in determining convenience and necessity) whether the new service should be rendered by the existing carriers or by the new applicant. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Duplication of Service.—Under a former article of similar import, it was held that the Commission might, in its discretion, grant a franchise which would duplicate in whole or in part a previously authorized similar class of service; and, when it was shown to the satisfaction of the Commission that the existing operations were not providing sufficient service reasonably to meet the public convenience and necessity and the existing operators, after thirty days' notice, failed to provide the service required by the Commission, it would be the duty of the Commission to do so. State v. Carolina Coach Co., 224 N. C. 390, 30 S. E. (2d) 328 (1944); State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951).

The question of duplication of service must be determined under the provisions of the statute which was in effect at the time the order of the Commission was entered. State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951).

"Route" Not Synonymous with "Territory". — "Route" as used in this article means the highway or road traveled in serving communities, districts, or territories adjacent to it, and is not synonymous with "territory." State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951); State v. Ray, 236 N. C. 692, 73 S. E. (2d) 870 (1953).

This section does not purport to protect against all competition but is designed to protect authorized carriers against ruinous competition, and the statute does not prohibit service of the same points by different carriers over separate routes when such duplicate service is in the public interest. State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951); State v. Ray, 236 N. C. 692, 73 S. E. (2d) 370 (1953).

Application by carrier to serve communities being served by another carrier, who intervenes and protests the application, as distinguished from an application for duplication of routes, does not require the Utilities Commission to find that the existing carrier's service is inadequate and to afford such existing carrier opportunity to remedy the inadequacy. State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951).

Protection as to Duplication in Route.—This section prohibits the granting of a franchise over any part of the route of an existing carrier except upon the prescribed conditions, and not merely a duplication of the same route from terminus to terminus, but the application to serve communities being served by the intervening carrier need not be denied in toto because there would be a duplication of routes along a short distance, since the existing carrier may be protected as to the duplication in route by proper restrictions in the certificate. State v. Queen City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951). See §§ 62-113, 62-114.

Subsection (f) of this section does not forbid authority to two or more carriers to traverse the same segment of a highway so long as they do not render duplicate service. The mere fact that the two carriers will use the same highway for a distance does not require a denial of the application. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

A traversing of the same highways for certain distances by competing carriers may readily become necessary in the public interest and, in such an instance, more than one certificate may be granted, subject to such restrictions as will protect the authorized carrier in respect of that part of the highway to be traversed by both. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Commission May Grant "Closed Door" Authority Though Application Is for Authority to Duplicate Service. — Since the Utilities Commission is not confined to the immediate scope of the pleadings filed, and may enlarge the scope of the inquiry, it may grant a "closed door" authority even though the application is for authority to duplicate service. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

When "Closed Door" Authority Proper.—Where the principal business of a carrier is the transportation of passengers between two cities of the state along a route serving a number of other cities, and the improvement and construction of highways makes feasible a new and more direct route between the termini, the Utilities Commission, upon appropriation findings of fact, may grant such carrier "closed door" authority along the new route, notwithstanding that other carriers respectively, serve segments of the route in "open door" operations. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Charter Service.—See State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Amendment Held Not to Enlarge Scope of Operation of Carrier. — See State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Applied in Bryant v. Barber, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

§ **62-263. Application for broker's license.**—(a) No person shall engage in the business of a broker in intrastate operations within this State unless such person holds a broker's license issued by the Commission.

(b) The Commission shall prescribe the form of application and such reasonable requirements and information as may in its judgment be necessary.

(c) Upon the filing of an application for license the Commission may fix a time and place for the hearing of the application and require such notices, publications, or other service as it may prescribe by the general rule or regulation.

(d) A license shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest and policy declared herein.

(e) The Commission shall have the same authority over persons operating under and holding a brokerage license as it has over motor carriers under this article, and shall require a broker to furnish bond or other security approved by the Commission and sufficient for the protection of travelers by motor vehicle. (1949, c. 1132, s. 13; 1963, c. 1165, s. 1.)

§ **62-264. Dual operations.**—Unless the Commission, in its discretion, finds that the public interest so requires, no person or any person controlling, controlled by, or under common control with such person, shall hold both a certificate as a common carrier and permit as a contract carrier. (1947, c. 1008, s. 16; 1949, c. 1132, s. 16; 1963, c. 1165, s. 1.)

§ **62-265. Emergency operating authority.**—To meet unforeseen emergencies, the Commission may, upon its own initiative, or upon written request by any person, department or agency of the State, or of any county, city or town, with or without a hearing, grant appropriate authority to any owner of a duly licensed vehicle or vehicles, whether such owner holds a certificate or permit or not, to transport passengers or property, baggage, mail, newspapers and light express between such points, or within such area during the period of the emergency and to the extent necessary to relieve the same, as the Commission may fix in its order granting such authority; provided, that unless the emergency is declared by the General Assembly or under its authority, the Commission shall find from such request, or from its own knowledge or conditions, that a real emergency exists and that relief to the extent authorized in its order is immediate, pressing and necessary in the public interest, and that the carrier so authorized has the necessary equipment and is willing to perform the emergency service as prescribed by the order. In all cases, under this section, the Commission shall first afford the holders of certificates or permits operating in the territory affected an opportunity to render the emergency service. Upon the termination of the emergency, the operating privileges so granted shall automatically expire and the Commission shall forthwith withdraw all operating privileges granted to any person under this section. (1947, c. 1008, s. 17; 1949, c. 1132, s. 17; 1963, c. 1165, s. 1.)

§ **62-266. Interstate carriers.**—(a) This article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Commission may, in its discretion, require such carriers to file with it copies of their respective interstate authority and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Commission may deem advisable in the administration of this article and for the protection of persons and property upon the highways of the State.

(b) The Commission or its authorized representative is authorized to confer with and to hold joint hearings with the authorities of other states or with the Interstate Commerce Commission or its representatives, or any other federal or State agency in connection with any matter arising under this chapter, or under the Federal Motor Carrier Act, or under any other federal law which may directly or indirectly affect the interests of the people of this State or the policy declared by this chapter or by the Interstate Commerce Act. (1947, c. 1008, s. 35; 1949, c. 1132, s. 32; 1963, c. 1165, s. 1.)

§ **62-267. Deviation from regular route operations.** — (a) A common carrier of passengers by motor vehicle operating under a certificate issued by the Commission may occasionally deviate from the routes over which it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(b) Any common carrier by motor vehicle, now or hereafter holding a certificate issued by the Commission authorizing the transportation of general commodities over regular routes between fixed termini, may, under such rules and regulations as the Commission may prescribe:

(1) Transport from origin to destination, over any convenient highway or highways, shipments in truck loads originating at or destined to points on the regular routes of such carrier, and

(2) Move shipments in truck loads from any point on its regular routes to any other points on its regular routes over any convenient highway or highways between such points, whether over the routes of another carrier or not, where such movement over the carrier's own routes would otherwise be unnecessarily circuitous.

(c) In no event shall the operation of empty equipment by any carrier over any route or highway be construed as a violation of the rights of any carrier. (1947, c. 1008, s. 18; 1949, c. 1132, s. 18; 1963, c. 1165, s. 1.)

§ **62-268. Security for protection of public.**—No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. (1947, c. 1008, s. 19; 1949, c. 1132, s. 19; 1963, c. 1165, s. 1.)

§ **62-269. Accounts, records and reports.** — The Commission may prescribe the forms of any and all accounts, records and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors, to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, stubs, correspondence, or documents of motor carriers, brokers, or lessors, as may after a reasonable time be destroyed, and prescribing the length of time they shall be preserved. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers, brokers, and lessors; and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers, brokers, and lessors, and such accounts, books, records, memoranda, correpondence, and other documents of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. Motor carriers, brokers, lessors, and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this section, and motor carriers, brokers, and lessors, shall submit their lands, buildings, and equipment for examination and inspection, to any duly authorized special agent, accountant, auditor, inspector, or examiner of the Commission upon demand and the display of proper credentials. (1947, c. 1008, s. 28; 1949, c. 1132, s. 25; 1959, c. 639, ss. 5, 6, 9, 10; 1961, c. 472, s. 10; 1963, c. 1165, s. 1.)

§ **62-270. Orders, notices, and service of process.** — It shall be the duty of every motor carrier operating under a certificate or permit issued under the provisions of this article to file with the Commission a designation in writing of the name and post-office address of a person upon whom service of notices or orders may be made under this article. Such designation may from time to time be changed by like writing similarly filed. Service of notice or orders in proceedings under this article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier. (1947, c. 1008, s. 29; 1949, c. 1132, s. 26; 1957, c. 1152, ss. 6, 11; 1963, c. 1165, s. 1.)

§ **62-271. Collection of rates and charges of motor carriers of property.**—No common carriers of property by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it in intrastate commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided, that the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for the State, or political subdivision thereof. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver property transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (i) is an agent only and had no beneficial title in the property, and (ii) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper and consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, nothwithstanding the foregoing provisions of this section. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. (1947, c. 1008, s. 31; 1963, c. 1165, s. 1.)

§ **62-272. Allowance to shippers for transportation services.**—If the owner of property transported under the provisions of this article directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in the tariffs or schedules filed in the manner provided in this article and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order. (1947, c. 1008, s. 32; 1963, c. 1165, s. 1.)

§ **62-273. Embezzlement of C. O. D. shipments.**—Property received by any motor carrier to be transported in intrastate commerce and delivered upon collection on such delivery and remittance to the shipper of the sum of money stated in the shipping instructions to be collected and remitted to the shipper, and the money collected upon delivery of such party, is hereby declared to be held in trust by any carrier having possession thereof or the carrier making the delivery or collection, and upon failure of any such carrier to account for the property so received, either to the shipper to whom the collection is payable or the carrier making delivery to any carrier handling the property or making the collection, within fifteen (15) days after demand in writing by the shipper, or carrier, or upon failure of the delivering carrier to remit the sum so directed to be collected and remitted to the shipper, within fifteen (15) days after collection is made, shall be prima facie evidence that the property so received, or the funds so received, has been wilfully converted by such carrier to its own use, and the carrier so offending shall be guilty of a felony and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court, and such carrier may be indicted, tried, and punished in the county in which such shipment was delivered to the carrier or in any other county into or through which such shipment was transported by such carrier. (1947, c. 1008, s. 33; 1963, c. 1165, s. 1.)

The lessor-holders of a certificate of convenience and necessity are liable and answerable jointly with the lessee-operator to the shipper for losses sustained by reason of wrongful conversion of C. O. D. moneys collected by the lessee-operator company. Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ **62-274. Evidence; joinder of surety.**—No report by any carrier of any accident arising in the course of the operations of such carrier, made pursuant to any requirement of the Commission, and no report by the Commission of any investigation of any such accident, shall be admitted as evidence, or used for any other purpose in any suit or action for damages growing out of any matter mentioned in such report or investigation; nor shall the discharge by any carrier of any truck driver or other employee after any such accident be offered or admitted in evidence for any purpose, in any suit or action against such carrier for damages arising out of any such accident; nor shall any insurance company or surety executing any insurance policy, bond, or other security for the protection of the public, as provided in § 62-268, or as provided in § 62-112, be joined with the assured carrier in any action or suit for damages, debt, or claim thereby secured; nor shall evidence of any such policy, bond, or other security be offered or received in any such action or suit against the carrier, but the surety or insurer shall be obligated within the amount of such policy, bond or other security to pay any final judgment against the carrier. (1947, c. 1008, s. 34; 1949, c. 1132, c. 31; 1963, c. 1165, s. 1.)

§ **62-275. Depots and stations.**—Upon notice and hearing and upon a finding by the Commission that public convenience and necessity so requires, the

Commission is authorized and empowered to compel any common carrier of passengers by motor vehicle operating under the provisions of this article and serving any municipality to establish and maintain a passenger depot or station for the security, accommodation and convenience of the traveling public. When two or more such carriers operating under the provisions of this article shall serve any municipality, the Commission is authorized and empowered to require such carriers to establish and maintain a union passenger depot or station for the security, accommodation and convenience of the traveling public, and to unite in the joint undertaking and expense of securing, erecting, constructing and maintaining such union passenger depot or station, commensurate with the business and revenue of such motor carriers, on such terms, regulations, provisions and conditions as the Commission shall prescribe; and all union passenger depots or stations shall provide impartially all services incident to the comfort and convenience of the traveling public, including but not limited to the following basic union services: Waiting rooms, comfort stations and rest rooms; loading and unloading of passengers; selling, changing and adjusting of tickets; furnishing information about tickets, schedules, routes, arrivals and departures; handling, checking and storage of baggage; receiving, handling, and delivering express: Provided that nothing herein shall be construed as limiting the right of any motor carrier operating under the provisions of this article to sell its own tickets and furnish its own information about tickets, schedules, routes, arrivals and departures at any place separate, apart and away from the union passenger depot or station, but not upon the premises of the union station, so long as such motor carrier also continues to participate in the union sale of its and all other carriers' tickets and the union information facilities within the station premises under union station management: Provided that any of the aforementioned union services may be provided independently within the union station premises by each carrier utilizing the union passenger depot or station upon the unanimous agreement of all such carriers and the approval of the Utilities Commission: Provided, that whenever the Commission shall require that a union depot or station shall be provided, it shall first allow the carriers required to provide such station an opportunity to submit to the Commission for approval any agreement between or among such carriers for the securing, construction, maintenance and operation of such station or depot. The Commission shall approve such agreement or agreements, if the same be, in the Commission's discretion, reasonable and just and in the public interest. (1949, c. 1132, s. 28; 1963, c. 1165, s. 1.)

Commission May Require Establishment of Union Stations. — The Commission has statutory authority to require bus companies to establish union stations. Such stations are unquestionably convenient to passengers who have to change from one bus line to another. They impose no undue burden on interstate commerce. The State may lawfully require all bus companies, both interstate and intrastate, to use such union stations. State v. Atlantic Greyhound Corp., 252 N. C. 18, 113 S. E. (2d) 57 (1960).

But May Not Prohibit Opening of Separate Ticket Office.—A rule of the Commission prohibiting a carrier from opening a ticket office separate and apart from the ticket office at union station is void as imposing an undue burden on interstate commerce. State v. Atlantic Greyhound Corp., 252 N. C. 18, 113 S. E. (2d) 57 (1960).

§ 62-276. Construction of article. — Nothing herein contained shall be construed to relieve any motor carrier from any regulation otherwise imposed by law or lawful authority, and this article shall not be construed to relieve any such motor carrier from any obligation or duty imposed by chapter 20 of the General Statutes of North Carolina. (1949, c. 1132, s. 35; 1963, c. 1165, s. 1.)

§ 62-277. Commission investigators and inspectors given enforcement authority.—The transportation inspectors and special investigators employed by the Commission shall have the same enforcement authority and police powers as members of the State Highway Patrol in enforcing this article and other provisions of this chapter applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the Commission and offer evidence at the trial pursuant to such processes. (1963, c. 1165, s. 1.)

§ **62-278. Revocation of license plates by Utilities Commission.** — (a) The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for wilful violation of any provision of this chapter, or for the wilful violation of any lawful rule or regulation made and promulgated by the Utilities Commission. To that end the Commission shall have power upon complaint or upon its own motion, after notice and hearing, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding thirty (30) days, and it shall be the duty of the Department of Motor Vehicles to execute such orders made by the Utilities Commission upon receipt of a certified copy of the same.

(b) This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State. (1951, c. 1120; 1963, c. 1165; s. 1.)

Editor's Note.—This section is in substance a re-enactment of § 20-64.1.

§ **62-279. Injunction for unlawful operations.**—If any motor carrier, or any other person or corporation, shall operate a motor vehicle in violation of any provision of this chapter applicable to motor carriers or motor vehicles generally, except as to the reasonableness of rates or charges and the discriminatory character thereof, or shall operate in violation of any rule, regulation, requirement or order of the Commission, or of any term or condition of any certificate or permit, the Commission or any holder of a certificate or permit duly issued by the Commission may apply to the resident superior court judge of any judicial district where such motor carrier or other person or corporation so operates, or to any superior court judge holding court in such judicial district, for the enforcement of any provisions of this article, or of any rule, regulation, requirement, order, term or condition of the Commission. Such court shall have jurisdiction to enforce obedience to this article or to any rule, order, or decision of the Commission by a writ of injunction or other process, mandatory or otherwise, restraining such carrier, person or corporation, or its officers, agents, employees and representatives from further violation of this article or of any rule, order, regulation, or decision of the Commission. (1947, c. 1008, s. 30; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, ss. 8, 11; 1963, c. 1165, s. 1.)

Restraining Illegal Operation Along Route.—A franchise carrier may maintain an action in the superior court to restrain another carrier from illegal operation along his route without a certificate or permit from the Utilities Commission when such illegal operation by such other carrier interferes with its franchise rights. Bryant v. Barber, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

As to right of common carrier to apply to court for injunctive relief against wrongful acts of another carrier under former statute repealed and superseded by Bus Act of 1949, see Burke Transit Co. v. Queen City Coach Co., 228 N. C. 768, 47 S. E. (2d) 297 (1948).

§§ **62-280 to 62-289:** Omitted.

Article 13.

Reorganization of Public Utilities.

§ 62-290. Corporations whose property and franchises sold under order of court or execution.—When the property and franchises of a public utility corporation are sold under a judgment or decree of a court of this State, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchises, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all the rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the State now or hereafter established with reference to trusts and contracts in restraint of trade. (Code, ss. 697, 698; 1897, c. 305; 1901, c. 2, s. 99; Rev., s. 1238; 1913, c. 25, s. 1; 1919, c. 75; C. S., s. 1221; 1955, c. 1371, s. 2; 1963, c. 1165, s. 1.)

§ 62-291. New owners to meet and organize; special rule for railroads.—(a) The persons for whom the property and franchises have been purchased pursuant to § 62-290 shall meet within thirty (30) days after the delivery of the conveyance made by virtue of said judgment or decree, and organize the new corporation, ten days' written notice of the time and place of the meeting having been given to each of said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.

(b) Whenever the purchaser of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may hereafter be sold, by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser may associate with him any number of persons, and make and acknowledge and file articles of association as prescribed by this chapter. Such purchaser and his associates shall thereupon be a new corporation, with all the powers, privileges and franchises and subject to all of the provisions of this chapter.

(c) When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law. (1871-2, c. 138, s. 5; Code, ss. 1936, 2005; 1901, c. 2, ss. 100, 101, 102; Rev., ss. 1239, 1240, 2552, 2565; C. S., ss. 1222, 3462, 3463; 1955, c. 1371, s. 2; 1963, c. 1165, s. 1.)

Railroad May Be Sold.—A railroad is the subject of private property, and in that character is liable to be sold, unless the sale be forbidden by the legislature;

not the franchise, but the land itself constituting the road. State v. Rives, 27 N. C. 297 (1844).

Corporation Not Dissolved by Sale. — A railroad corporation is not dissolved by the sale of its road. State v. Rives, 27 N. C. 297 (1844).

Purchaser Takes Rights of Old Company.—On the foreclosure of a mortgage given by a railroad company, the purchaser takes the rights that the company had acquired in relation to its right of way under its charter. Barker v. Southern R. Co., 137 N. C. 214, 49 S. E. 115 (1904).

Purpose of Subsection (c)—Property Associated with Franchises.—The legislative purpose, as clearly manifested in subsection (c) of this section, is that the property of railroads must be kept in association with their franchises, to preserve value, to give credit to such corporations, to secure creditors, and to keep railroads in operation for the benefit of the public, which was the primary object of the legislature in bestowing such corporate franchises. Bradley v. Ohio R., etc., Ry. Co., 78 F. 387 (1896); 119 N. C., Appx., 918 (1897).

When Sale Effects Dissolution.—In order that the sale of the franchise and property of a railroad corporation under mortgage shall have the effect of a dissolution of such corporation, another corporation must be provided to take its place and assume and discharge the obligations to the public growing out of the grant of the franchise, and until that is done the old corporation continues to exist, and when it is done the new corporation will be a domestic corporation. James v. Western North Carolina R. Co., 121 N. C. 523, 28 S. E. 537 (1897).

Corporate Existence Not Extinguished by Sale under Second Mortgage. — The sale of a railroad under a second mortgage and a conveyance thereunder, subject to the first mortgage upon its franchise and corporate property, did not extinguish the corporate existence of the company nor release if from liability to the public for the manner in which it is operated. James v. Western North Carolina R. Co., 121 N. C. 523, 28 S. E. 537 (1897).

Same—Rights of Purchaser—Liability of Old Corporation for Damages. — The effect of the sale of a railroad company's franchises and property under a second mortgage, subject to a first mortgage which was assumed by the purchaser, is to place the purchaser in the place of the mortgagor in its relation to the trustee of the first mortgage, with the right to run and operate the road as agent of the mortgagor, but the old corporation was not extinguished, but is still in existence and liable for damages caused by the maladministration of its agent which liability can be enforced against the property which it allows the purchaser to use. James v. Western North Carolina R. Co., 121 N. C. 523, 28 S. E. 537 (1897).

§ 62-292. Certificate to be filed with Secretary of State.—It is the duty of the new corporation provided for by this article, within one (1) month after its organization, to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the Secretary of State, to be filed and recorded in his office. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation. (1901, c. 2, s. 103; Rev., s. 1241; C. S., s. 1223; 1955, c. 1371, s. 2; 1963, c. 1165, s. 1.)

§ 62-293. Effect on liens and other rights.—Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under a sale pursuant to this article when by the terms of the judgment or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of any such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person or body politic not a party to the action in which the judgment or decree was made, nor of any party except as determined by the judgment or decree. When a trustee has been made a party to such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree. (1901, c. 2, s. 103; Rev., s. 1241; C. S., s. 1224; 1955, c. 1371, s. 2; 1963, c. 1165, s. 1.)

§§ **62-294 to 62-299:** Omitted.

ARTICLE 14.

Fees and Charges.

§ **62-300. Particular fees and charges fixed; payment.** — (a) The Commission shall receive and collect the following fees and charges, and no others:

(1) Twenty-five dollars ($25.00) with each notice of appeal to the superior court, and with each notice of application for a writ of certiorari.

(2) Twenty-five dollars ($25.00) with each application for a certificate or permit for motor carrier operating rights, and with each application to amend such certificate or permit so as to extend or enlarge the scope of operations thereunder, or as filing fee for each broker who applies for a brokerage license under the provisions of this chapter.

(3) Twenty-five dollars ($25.00) with each application for a general increase in rates, fares or charges. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations.

(4) Twenty-five dollars ($25.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by a motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

(5) Twenty-five dollars ($25.00) with each application for a certificate of public convenience and necessity, or for any amendment thereto so as to extend or enlarge the scope of operations thereunder.

(6) Twenty-five dollars ($25.00) with each application for approval of the issuance of securities, or for approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction.

(7) Ten dollars ($10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service from a public utility.

(8) One dollar ($1.00) for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the Commission, and a fee of twenty-five cents (25¢) for the annual re-registration of each such motor vehicle.

(9) Thirty cents (30¢) for each page (8½ x 11 inches) of transcript of testimony, but not less than five dollars ($5.00) for any such transcript.

(10) Fifteen cents (15¢) for each one hundred words of copies of papers, orders, certificates or other records, but not less than one dollar ($1.00) for any such record, plus one dollar ($1.00) for certifying any such paper, order or record.

(11) Twenty cents (20¢) for each page reproduced by photostatic or similar

process and for each page of an order which can be made available without the necessity of copying or reproduction.

(b) All witness fees, officers' fees serving papers, and cost of serving notice by publication shall be paid by the party at whose instance or for whose benefit such fees and costs are incurred.

(c) No application, petition, complaint, notice of appeal, notice of application for writ of certiorari, or other document or paper, the filing of which requires the payment of a fee under this article, shall be deemed filed until the fees herein required shall have been paid to the Commission.

(d) The fees and charges as set forth in subdivisions (1), (7), (9) and (10) of subsection (a) of this section shall not apply to the State of North Carolina or to any board, department, commission, institution or other agency of the State; and all applications, petitions or complaints submitted by the State of North Carolina or any board, department, commission, institution or other agency of the State shall be filed without the payment of the fees required by this section. All transcripts, papers, orders, certificates, or other records necessary to perfect an appeal, or to determine whether an appeal is to be taken, shall be furnished without charge to the Attorney General upon his request in cases in which the Attorney General appears in the public interest or as representing any board, department, commission, institution or other agency of the State. (1953, c. 825, s. 1; 1955, c. 64; 1957, c. 1152, s. 15; 1961, c. 472, ss. 2-4; 1963, c. 1165, s. 1.)

§ 62-301. Fees and charges supplemental; disposition.—All fees and charges received by the Commission under § 62-300 shall be in addition to any other tax or fee provided by law and shall be paid by the Commission to the State Treasurer to be credited to the Commission as an allotment deposit. (1953, c. 825, s. 2; 1963, c. 1165, s. 1.)

§§ 62-302 to 62-309: Omitted.

ARTICLE 15.

Penalties and Actions.

§ 62-310. Public utility violating any provision of chapter, rules or orders; penalty.—Any public utility which violates any of the provisions of this chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this chapter, forfeit and pay a sum up to one thousand dollars ($1,000.00) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Utilities Commission; and each day such public utility continues to violate any provision of this chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense. (1899, c. 164, s. 23; Rev., s. 1087; C. S., s. 1106; 1933, c. 134, s. 8; c. 307, ss. 36, 37; 1941, c. 97; 1963, c. 1165, s. 1.)

Action Ex Contractu. — It would seem that an action against a railroad company for a penalty for violation of statute is an action ex contractu for breach of an implied contract to perform a statutory duty. State v. Wilmington, etc., R. Co., 126 N. C. 437, 36 S. E. 14 (1900).

Construction of Penal Statute.—The rule that a penal statute must be strictly construed, means no more than that the court, in ascertaining the meaning of such a statute, cannot go beyond the plain meaning of the words and phraseology employed in search of an intention not certainly implied by them, and when there is reasonable doubt as to the meaning of the words used in the statute, the court will not give them such an interpretation as to impose the penalty, nor will the purpose of the statute be extended by implication, so as to embrace cases not clearly within its meaning. Hines v. Wilmington, etc., Railroad, 95 N. C. 434 (1886).

§ **62-311. Wilful acts of employees deemed those of public utility.**—The wilful act of any officer, agent, or employee of a public utility, acting within the scope of his official duties of employment, shall, for the purpose of this article, be deemed to be the wilful act of the utility. (1933, c. 307, s. 29; 1963, c. 1165, s. 1.)

§ **62-312. Actions to recover penalties.**—Except as otherwise provided in this chapter, an action for the recovery of any penalty under this chapter shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the solicitor of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions. (Code, s. 1976; 1885, c. 221; 1899, c. 164, ss. 8, 15; Rev., ss. 1092, 1113, 2647; C. S., ss. 1062, 1111, 3415; 1933, c. 134, s. 8; c. 307, s. 30; 1941, c. 97; 1963, c. 1165, s. 1.)

Cross Reference. — As to venue of actions against railroads, see § 1-81.

The penalty prescribed by § 60-200 for failure to transport within a reasonable time is given directly to the party aggrieved, and an action therefor is not required to be brought in the name of the State. Robertson v. Atlantic, etc., R. Co., 148 N. C. 323, 62 S. E. 413 (1908).

Duty of Attorney General under Former Statute.—See Southern R. Co. v. McNeill, 155 F. 756 (1907).

§ **62-313. Refusal to permit Commission to inspect records made misdemeanor.**—Any public utility, its officers or agents in charge thereof, that fails or refuses upon the written demand of the Commission, or a majority of said Commission, and under the seal of the Commission, to permit the Commission, its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred dollars ($500.00) and not more than five thousand dollars ($5,000.00). (1963, c. 1165, s. 1.)

§ **62-314. Violating rules, with injury to others.**—If any public utility doing business in this State by its agents or employees shall be guilty of the violation of the rules and regulations provided and prescribed by the Commission, and if after due notice of such violation given to the principal officer thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or, if not then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person as may be directed by the Commission shall not be made within thirty (30) days from the time of such notice, such public utility shall incur a penalty for each offense of five hundred dollars ($500.00). (1899, c. 164, s. 15; Rev., s. 1086; C. S., s. 1105; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Validity.—A statute giving authority to the Commission after notice for failure of any railroad company to make full and ample recompense for the violation of rules and regulations to proceed in the courts, to enforce the penalties prescribed for such violation is valid without providing in detail the methods of procedure. Atlantic Exp. Co. v. Wilmington, etc., Railroad. 111 N. C. 463, 16 S. E. 393 (1892).

Duty of Commission to Enforce Rules and Orders.—While the Commission has no power to render a judgment for the payment of money, etc., it is their duty to enforce their rules and orders, and the power to do so is given by this section. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908).

Right to Investigate Complaint. — The Commission had the undoubted right and it was eminently proper for them to institute an inquiry and inform themselves as to whether a complaint was grounded in truth. They were not required to institute an action for the penalty simply because a citizen feeling himself aggrieved had made a complaint before them. They did right to investigate the matter for themselves, but the end of such investigation was simply to afford them information and enable them to act intelligently in determining whether they would sue for the penalty given by the statute. State v. Southern R. Co., 147 N. C. 483, 61 S. E. 271 (1908).

§ 62-315. Failure to make report; obstructing Commission.—Every officer, agent or employee of any public utility, who shall wilfully neglect or refuse to make and furnish any report required by the Commission for the purposes of this chapter, or who shall wilfully or unlawfully hinder, delay or obstruct the Commission in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars ($500.00) for each offense, to be recovered in an action in the name of the State. A delay of ten (10) days to make and furnish such report shall raise the presumption that the same was wilful. (1899, c. 164, s. 18; Rev., s. 1089; C. S., s. 1108; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Construction of Similar Statute. — In construing a statute (Code of 1883, s. 1960) which provided a similar penalty against corporations for failure to make the returns into court, in State v. Marietta, etc., Railroad, 108 N. C. 24, 12 S. E. 1041 (1891), it was held that the penalty could only be recovered in an action brought by the State. A private relator could not maintain the action.

§ 62-316. Disclosure of information by employee of Commission unlawful.—It shall be unlawful for any agent or employees of the Commission knowingly and wilfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this chapter, or as he may be directed by the Commissioner or by a court or judge thereof. (1947, c. 1008, s. 30; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, ss. 8, 11; 1963, c. 1165, s. 1.)

§ 62-317. Remedies for injuries cumulative.—The remedies given by this chapter to persons injured shall be regarded as cumulative to the remedies otherwise provided by law against public utilities. (1899, c. 164, s. 26; Rev., s. 1093; C. S., s. 1112; 1963, c. 1165, s. 1.)

§ 62-318. Allowing or accepting rebates a misdemeanor. — If any person shall participate in illegally pooling freights or shall directly or indirectly allow or accept rebates on freights, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars ($1,000.00) or imprisoned not less than twelve (12) months. (1879, c. 237, s. 2; Code, s. 1968; Rev., s. 3762; C. S., s. 3520; 1963, c. 1165, s. 1.)

§ 62-319. Beating way on train a misdemeanor; venue.—If any person, with the intention of being transported free in violation of law, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than thirty (30) days. Any person charged with a violation of this section may be tried in any county in this State through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered. (1899, c. 625; 1905, c. 32; Rev., s. 3748; C. S., s. 3508; 1963, c. 1165, s. 1.)

Effect on Liability of Insurance Company.—A policy of accident insurance that excepts from the company's full liability "sickness due to immorality or the violation of law," does not of itself exclude such liability for an injury caused by the plaintiff's stealing a ride on a railway train, made a misdemeanor by this section, unless the plaintiff's act was so reckless as to withdraw it from the class of accidents covered by the policy. Poole v. Imperial Mut. Life, etc., Co., 188 N. C. 468, 125 S. E. 8 (1924).

§ **62-320. Failure to place name on produce a misdemeanor.**—Any person, selling or offering for sale or consignment any barrel, crate, box, case, package or other receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or other produce of any kind whatsoever, to be shipped to any point within or without this State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty (30) days: Provided, that this section shall not apply to railroads, express companies and other carriers selling or offering for sale, for transportation or storage charges or any other charges accruing to such railroads, express companies or other carriers, any barrel, crate, box, case, package, or other receptacle containing berries, fruit, melons, potatoes, vegetables, truck or other produce. (1915, c. 193; C. S., s. 3531; 1963, c. 1165, s. 1.)

§ **62-321. Penalty for nondelivery of intrastate telegraph message.**—Any telegraph company doing business in this State that shall fail to transmit and deliver any intrastate message within a reasonable time shall forfeit and pay to anyone who may sue for same a penalty of twenty-five dollars ($25.00). Such penalty shall be in addition to any right of action that any person may have for the recovery of damages. Proof of the sending of any message from one point in this State to another point in this State shall be prima facie evidence that it is an intrastate message. (1919, c. 175; C. S., s. 1704; 1963, c. 1165, s. 1.)

Sending Message Through Another State to Avoid Liability for Damages.—A telegraph company accepting a telegram to be transmitted between points in this State, where a recovery for mental anguish is allowed, may not avoid such liability by unnecessarily sending the message through another state, when it could have reasonably been otherwise transmitted. Speight v. Western Union Tel. Co., 178 N. C. 146, 100 S. E. 351 (1919).

Same—Burden of Proof. — Where a telegraph company has direct available facilities for transmitting an intrastate telegram altogether within the State, and relays it at offices in another state, the burden of proof is upon it to show that it was not done to evade the jurisdiction of the State court. Speight v. Western Union Tel. Co., 178 N. C. 146, 100 S. E. 351 (1919).

§ **62-322. Unauthorized manufacture or sale of switch-lock keys a misdemeanor.**—It shall be unlawful for any person to make, manufacture, sell or give away to any other person any duplicate key to any lock used by any railroad company in this State on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1909, c. 795; C. S., s. 3477; 1963, c. 1165, s. 1.)

§ **62-323. Wilful injury to property of public utility a misdemeanor.**—If any person shall wilfully do or cause to be done any act or acts whatever whereby any building, construction or work of any public utility, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor. (1871-2, c. 138, s. 39; Code, s. 1974; Rev., s. 3756; C. S., s. 3478; 1963, c. 1165, s. 1.)

Cross Reference.—As to injury to property of railroads and other carriers, see §§ 14-278, 14-279.

§ 62-324. Disclosure of information as to shipments unlawful.—(a) It shall be unlawful for any common carrier engaged in intrastate commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, or for any other person authorized by such carrier, to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(b) Nothing in this section shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the State or of the government of the United States, in the exercise of his power, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. (1947, c. 1008, s. 30; 1961, c. 472, s. 8; 1963, c. 1165, s. 1.)

§ 62-325. Unlawful motor carrier operations. — (a) Any person, whether carrier, passenger, shipper, consignee, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and wilfully by any such means or otherwise fraudulently seek to evade or defeat regulations as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than five hundred dollars ($500.00) for the first offense and not more than two thousand dollars ($2,000.00) for any subsequent offense.

(b) Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall wilfully fail or refuse to make a report to the Commission as required by this article, or other applicable law, or to make specific and full, true, and correct answer to any question within thirty (30) days from the time it is lawfully required by the Commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Commission, or shall knowingly and wilfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and wilfully neglect or fail to make true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this article to keep the same, or shall knowingly and wilfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than five thousand dollars ($5,000.00). As used in this subsection the words "kept" and "keep" shall be construed to mean made, prepared, or compiled, as well as retained. It shall be the duty of the Commission to prescribe and enforce such general rules and regulations as it may deem necessary to compel all motor carriers to keep accurate records of all revenue received by them to the end that any tax levied and assessed by the State of North Carolina upon revenues may be collected. Any agent or employee of a motor carrier who shall wilfully and knowingly make a false report or record of fares, charges, or other revenue received by a carrier or collected in its behalf shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

(c) Any person who, at any bus terminal, solicits or otherwise attempts to induce any person to use some form of transportation for compensation other than that lawfully using said terminal premises by contract with the terminal operator or by valid order of the Commission shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than fifty dollars ($50.00) or imprisoned not to exceed thirty (30) days, or both, in the discretion of the court. (1947, c. 1008, s. 30; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, ss. 8, 11; 1963, c. 1165, s. 1.)

Chapter 63.

Aeronautics.

ARTICLE 1.

Municipal Airports.

§ 63-5. Airport declared public purpose; eminent domain.

Operation of Airport Is Proprietary and Nongovernmental Function. — The operation and maintenance of a municipal airport and its facilities is a proprietary or nongovernmental function or undertaking of the city for a public purpose, and for which the municipality may be held liable in tort for negligence in the operation thereof. Jewell Ridge Coal Corp. v. Charlotte, 204 F. Supp. 256 (1962).

ARTICLE 2.

State Regulation.

§ 63-15. Collision of aircraft.

This section appears merely to declare the common law. Jewell Ridge Coal Corp v. Charlotte, 204 F. Supp. 256 (1962).

Liability of a carrier of passengers by aircraft must be based on negligence. Such carrier is not an insurer of the safety of its passengers. Jackson v. Stancil, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

Res Ipsa Loquitur Inapplicable. — In a case involving an airplane crash the doctrine of res ipsa loquitur does not apply. Jackson v. Stancil, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

§ 63-16. Jurisdiction over crimes and torts.

Jurisdiction Where Crash Occurs in Another State.—A court of this State has jurisdiction of an action between residents to recover for negligent injury and death in an airplane crash occurring in another state while the plane was on a trip under contract made in this State. Jackson v. Stancil, 253 N. C. 291, 116 S. E. 817 (1960).

§ 63-24. Jurisdiction of State over crimes and torts retained.

Jurisdiction Where Crash Occurs in Another State.—See same catchline under § 63-16.

ARTICLE 4.

Model Airport Zoning Act.

§ 63-33. Procedure.

Local Modification. — City of Wilson: 1961, c. 635; 1963, c. 151.

Article 6.

Public Airports and Related Facilities.

§ 63-53. Specific powers of municipalities operating airports.

Cited in Jackson v. Stancil, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

Chapter 65.

Cemeteries.

Article 4.

Trust Funds for the Care of Cemeteries.

§ 65-10. Investment of funds.

Cross Reference. — As to investment of funds in hands of clerks of court by color of their office, see §§ 2-54 to 2-60.

Article 5.

Removal of Graves.

§ 65-13. Removal to enlarge or erect churches, etc., or to establish hydro-electric reservoirs, or to perform governmental functions. — In those cases where any church authorities desire to enlarge a church building and/or erect a new church and/or parish house and/or parsonage and where it becomes necessary or expedient to remove certain graves in order to secure the necessary room for such enlargement, it shall be lawful for such church authorities after thirty days' notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plat in the church cemetery, or in another cemetery, due care being taken to protect tombstones and replace them properly so as to leave the graves in as good condition as before removal. When any lands are owned by any hydro-electric power or lighting company for use as a reservoir, on which lands there are graves, it shall be lawful for said company, after thirty (30) days' notice to the surviving husband or wife, or next of kin of the deceased, or the person in control of such graves, if any are known, and if not known, then after publishing a notice for four (4) weeks in a newspaper, published in the county and in a daily State paper, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and reinter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the county or the clerk of the superior court in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reinterring said remains. Due care shall also be taken to remove, protect and replace all tombstones or other markers, so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the county, if one, or his representatives; but if no welfare officer, then under the supervision and direction of the clerk of the court, or his representatives. All the expense connected with said work, including the actual expense of one of the "next of kin" in attending to same, shall be borne by the company doing, or causing same to be done.

If any municipality or other political subdivision of the State, or any school, university or college in this State shall find it necessary in order to perform its governmental or educational function and the duties prescribed by law or under authority of the governing body thereof, to remove graves from property owned by or in the custody and control of such municipality or other political subdivision, or of a school, university or college in the State, or from property owned by individuals or corporations, whether known or unknown, such graves may be moved by such municipality or political subdivision, or by such school, university or college, after thirty days' notice to the relatives of the deceased persons, if any are known, and if none are known, then after publication of a notice of such intended removal once a week for four (4) weeks in some newspaper having a general circulation in the county in which such property lies; and such graves when removed shall be removed to a suitable place in another cemetery, due care being taken to protect the tombstones and to place them properly so as to leave the graves in as good condition as before removal. All expense of the removal and acquisition of another burial site shall be borne by the municipality or political subdivision of the State, or by the school, university or college moving the said graves. (1919, c. 245; C. S., s. 5030; 1927, c. 23, s. 1; 1937, c. 3; 1947, c. 168; 1961, c. 457; 1963, c. 915, s. 1.)

Local Modification. — Orange (last paragraph): 1963, c. 915, s. 1½.

Editor's Note.—

The 1961 amendment changed the last paragraph so as to make the section applicable to the State and its agencies.

The 1963 amendment deleted references to the State and its agencies in the last paragraph and made the paragraph applicable to schools, universities and colleges.

Chapter 66.

Commerce and Business.

Article 9A.

Private Detectives.

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Article 9B.

Motor Clubs and Associations.

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ARTICLE 9A.

Private Detectives.

§ **66-49.1. License required.**—No private person, firm or corporation shall engage in the detective business within this State without having first obtained a license as provided in this article. (1961, c. 782.)

All old licenses were probably voided by the 1961 legislation. United States v. Leggett, 312 F. (2d) 566 (1962).

§ **66-49.2. Definitions.**—As used in this article unless the context otherwise requires, the term:

(1) "Bureau" means the State Bureau of Investigation.

(2) "Detective business" means:
  a. Engaging in the business of or accepting employment to obtain or furnish information with reference to:
    1. Crimes or wrongs done or threatened against the United States of America or any state or territory thereof;
    2. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person;
    3. The location, disposition or recovery of lost or stolen property;
    4. The cause or responsibility for fires, libels, losses, accidents, damage or injury to persons or property; or
    5. The securing of evidence to be used before any court, board, officer or investigating committee;
  b. Engaging in business as or accepting employment as a private patrol or guard service for consideration on a private contractual basis and not as an employee.

  "Detective business" shall not include:
  c. Insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment of claims against an insurance company;
  d. Persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employees relationship;
  e. An officer or employee of the United States or of this State or any political subdivision thereof, while such officer or employee is engaged in the performance of his official duties;
  f. A person engaged in the business of obtaining and furnishing information as to the financial rating of persons; or
  g. An attorney at law licensed to practice in North Carolina, or his agent.

(3) "Director" means the Director of the State Bureau of Investigation.

(4) "Person" includes individuals, firms, associations, companies, partnerships and corporations. (1961, c. 782.)

§ 66-49.3. Application for license; investigation; examination; issuance; grounds for refusal.—(a) Any person, firm, or corporation desiring to carry on a detective business in this State shall make application in writing to the Director of the State Bureau of Investigation for a license therefor.

(b) The application shall include:

(1) The full name and business address of the applicant;
(2) The name under which the applicant intends to do business;
(3) A statement as to the general nature of the business in which the applicant intends to engage;
(4) If an applicant is a person other than an individual, the full name and address of each of its partners, officers and directors and its business manager, if any;
(5) The names of not less than three unrelated and disinterested persons, as references of whom inquiry can be made as to the character, standing and reputation of the person, firm or corporation making the application. At least one of such persons must be a judge or a solicitor of a court of record in the county of applicant's last known residence and one such person must be a municipal chief of police or county sheriff in the county of the applicant's last known residence; and

(6) Such other information, evidence, statements or documents as may be required by the Director.

(c) Upon receipt of an application the Director shall cause an investigation to be made in the course of which the applicant shall be required to show that he meets all the following requirements and qualifications herebv made prerequisite to the obtaining of a license:

(1) That he is at least 21 years of age;
(2) That he is a citizen of the United States;
(3) That he is of good moral character and temperate habits;
(4) That he has had at least two years' experience in private investigative work or as an insurance adjuster or, in lieu thereof, at least one year's experience as a member of the Federal Bureau of Investigation, the State Bureau of Investigation, any municipal police department in this State or any county sheriff's department in this State;

or comply with such other qualifications as the Director may by regulation fix.

(d) Following investigation, the Director may require an applicant to demonstrate his qualifications by a written or oral examination or a combination of both.

(e) Upon a finding that: The application is in proper form; the investigation has shown the applicant to possess all the necessary qualifications and requirements; and the applicant has successfully completed any examination required, the Director shall issue to the applicant a license upon a showing by the applicant that he has paid the license tax provided for in G. S. 105-42, unless following a hearing the Director shall have found that the applicant has:

(1) Committed some act which if committed by a licensee would be grounds for the suspension or revocation of a license under this article;
(2) Committed an act constituting dishonesty or fraud;
(3) A bad moral character, intemperate habits or a bad reputation for truth, honesty and integrity;
(4) Been convicted of a felony or some other crime involving moral turpitude or involving the illegal use, carrying or possession of a dangerous weapon;
(5) Been refused a license under this article or has had a license revoked;
(6) Been an officer, director, partner or manager of any person who has been refused a license under this article or whose license has been revoked; or
(7) Knowingly made any false statement in his application. (1961, c. 782; 1963, c. 1154, s. 1.)

Editor's Note.—The 1963 amendment deleted "including at least one judge or solicitor of a court of record in this State or at least one municipal chief of police or county sheriff in this State; and" at the end of the present first sentence of subdivision (5) of subsection (b) and added the present second sentence to such subdivision.

§ 66-49.4. Form of license; term; renewal; posting; not assignable; trainee permits.—(a) The license when issued shall be in such form as may be determined by the Director and shall state:

(1) The name of the licensee;
(2) The name under which the licensee is to operate;
(3) The number and date of the license.

(b) The license shall be issued for a term of one year and shall be renewable on June 30 next following the issuance thereof, upon a showing that the licensee has paid the license tax provided for in G. S. 105-42 unless the license shall have been previously revoked in accordance with the provisions of this article. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this article is not assignable.

(c) A trainee permit may be issued to an applicant in the discretion of the Director. Such application shall state:

(1) That the applicant is employed by a private detective licensed under this article;
(2) The name and address of the applicant's employer;
(3) The name and address of the applicant; and
(4) A statement signed by the applicant and his employer that the trainee-applicant will work with and under the direct supervision of a private detective licensed under this article at all times.

Trainee permits issued under this section shall expire one (1) year from the date of issuance. (1961, c. 782; 1963, c. 1154, s. 2.)

Editor's Note.—The 1963 amendment designated the first two paragraphs of this section as subsections (a) and (b), respectively, and added subsection (c).

§ 66-49.5. Bond required; form and approval; actions on bond; cancellation.—No license shall be issued under this article unless the applicant files with the Director a surety bond executed by a surety company authorized to do business in this State in a sum of not less than five thousand dollars ($5,000.00), conditioned upon the faithful and honest conduct of his business by such applicant. The bond shall be taken in the name of the people of the State of North Carolina and every person injured by willful, malicious or wrongful act of the principal thereof may bring an action on the bond in his or her name to recover damages suffered by reason of such willful, malicious or wrongful act; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days notice to the Director; provided, however, that such cancellation shall not affect any liability on the bond which accrued prior thereto. The bond shall be approved by the Director as to form, execution and sufficiency of the sureties thereon. Failure to maintain the bond required by this section shall work an automatic forfeiture of the license provided for by this article. (1961, c. 782.)

§ 66-49.6. Suspension or revocation of licenses; appeal.—(a) The Director may, after hearing, suspend or permanently revoke a license issued under this article if he determines that the licensee or any officer, director, partner, manager or employee thereof has:

(1) Made any false statement or given any false information in connection with an application for a license or renewal or reinstatement of a license;
(2) Violated any provision of this article;
(3) Violated any regulation promulgated by the Director pursuant to the authority contained in this article;
(4) Been convicted of a felony or any crime involving moral turpitude or any other crime involving the illegal use, carrying or possession of a dangerous weapon;
(5) Committed any act in the course of the licensee's business constituting dishonesty or fraud;
(6) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer or employee of the United States or of this State or any political subdivision thereof;
(7) Engaged in or permitted any employee to engage in the detective business when not lawfully in possession of a valid license issued under the provisions of this article;

(8) Willfully failed or refused to render to a client service or a report as agreed between the parties and for which compensation has already been paid or tendered in accordance with the agreement of the parties;

(9) Committed an unlawful breaking and entering, assault, battery or kidnapping;

(10) Knowingly violated or advised, encouraged or assisted the violation of any court order or injunction in the course of business as a licensee;

(11) Committed any other act which is a ground for denial of an application for license under this article;

(12) Undertaking to give legal advice or counsel or to in anywise represent that he is representing any attorney or is appearing or will appear in any legal proceedings or to issue, deliver or utter any simulation of process of any nature which might lead a person or persons to believe that such simulation, written, printed or typed, may be a summons, warrant, writ or court process or any pleading in any court proceeding.

(b) Pending the hearing provided for in subsection (a) of this section the Director may suspend a license issued under this article when he has good reason to believe that grounds for revocation of license exist.

(c) The revocation of a license as provided in subsection (a) shall be in writing, signed by the Director, stating the grounds upon which revocation order is based, and the aggrieved person shall have the right to appeal from such an order within twenty (20) days after a copy thereof has been served upon him to the superior court of the county where licensee resided at time of revocation as herein provided. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, such trial may be confined to a review of the record made at the hearing by the Director. An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 782; 1963, c. 1154, s. 3.)

Editor's Note.—The 1963 amendment added subsection (c).

§ **66-49.7. Miscellaneous regulations.** — (a) Any licensee or officer, director, partner or manager of a licensee may divulge to any law enforcement officer or solicitor or his representative any information he may require as to any criminal offense but he shall not divulge to any other person, except as he be required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No licensee shall conduct a detective business under a fictitious name other than the name under which a license was obtained under the provisions of this article.

(d) Every advertisement by a licensee soliciting or advertising for business shall contain his name and address as they appear in the records of the Bureau and in which name the license was issued.

(e) Every licensee shall file in writing with the Bureau the address of each of his branch offices, if any, within ten days after the establishment, closing or changing of the location of any branch office. (1961, c. 782.)

§ **66-49.8. Penal provision.**—Any person who violates any provision of this article shall be guilty of a misdemeanor and shall upon conviction be fined or imprisoned or both in the discretion of the court. (1961, c. 782.)

ARTICLE 9B.

Motor Clubs and Associations.

§ **66-49.9. Definitions.**—As used in this article, unless the context otherwise requires, the term:

(1) "Motor club" means any person, firm, association or corporation, whether or not residing, domiciled or chartered in this State, which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use or maintenance of a motor vehicle by rendering three (3) or more of such services as towing service, emergency road service, legal service, bail or cash appearance bond service, map service, touring service, personal travel and accident insurance service, or automobile theft reward service.

(2) "Commissioner" means the Commissioner of Insurance of North Carolina; and "Department" means the Department of Insurance of North Carolina.

(3) "Licensee" means a motor club to whom a license has been issued under this article.

(4) "Towing service" shall mean furnishing means to move a motor vehicle from one place to another under power other than its own.

(5) "Emergency road service" shall mean roadside adjustment of a motor vehicle so that such vehicle may be operated under its own power, provided the cost of rendering such service does not exceed twenty-five dollars ($25.00).

(6) "Legal service" shall mean providing for reimbursement of members or subscribers for attorneys' fees not to exceed three hundred dollars ($300.00) in the event criminal proceedings are instituted against such members or subscribers as a result of the operation of a motor vehicle.

(7) "Bail or cash appearance bond service" shall mean the furnishing of cash or surety bond for its members or subscribers accused of a violation of the motor vehicle law, or of any law of this State by reason of an automobile accident to secure their release and subsequent appearance in court.

(8) "Map service" shall mean the furnishing of road maps to its members or subscribers without cost.

(9) "Touring service" shall mean the furnishing of touring information to its members or subscribers without cost.

(10) "Personal travel and accident insurance service" means making available to its members or subscribers a personal travel and accident insurance policy issued by a duly licensed insurance company in this State.

(11) "Automobile theft reward service" means a reward payable to any person, law enforcement agency or officer for information leading to the recovery of a member's or subscriber's stolen vehicle and to the apprehension and conviction of the person or persons unlawfully taking such vehicle. (1963, c. 698.)

Editor's Note. — The act inserting this article became effective Oct. 1, 1963.

§ **66-49.10. License required.**—No motor club, district or branch office of a motor club, or franchise motor club shall engage in business in this State unless it holds a valid license issued to it by the Commissioner as hereinafter provided. (1963, c. 698.)

§ **66-49.11. Applications for licenses; fees; bonds or deposits.**—Licenses hereunder shall be obtained by filing written application therefor with the

Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

(1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of General Statute 66-49.12, whether or not a license should be issued to the applicant.

(2) If the applicant is a motor club it shall be required to pay to the Commissioner an annual license fee of one hundred dollars ($100.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars ($50,000.00), or securities of the type hereinafter specified in the amount of fifty thousand dollars ($50,000.00), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this article and the regulations and orders issued by the Commissioner pursuant thereto, and upon the good faith performance by the applicant of its contracts for motor club services.

(3) If the applicant is a branch or district office of a motor club licensed under this article it shall pay to the Commissioner a license fee of ten dollars ($10.00).

(4) If the applicant is a franchise motor club it shall pay to the Commissioner an annual license fee of twenty-five dollars ($25.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars ($50,000.00), or securities of the type hereinafter specified in the amount of fifty thousand dollars ($50,000.00), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this article and the regulations and orders issued by the Commissioner pursuant thereto and upon the good faith performance by the applicant of its contracts for motor club services.

(5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in article 20, chapter 58 of the General Statutes of North Carolina, and the provisions of article 20, chapter 58 of the General Statutes of North Carolina, shall be applicable to securities pledged under this article. (1963, c. 698.)

§ 66-49.12. Issuance or refusal of license; notice of hearing on refusal; renewal.—Within sixty (60) days after an application for license is filed, the Commissioner shall issue a license to the applicant unless he shall find:

(1) That the applicant has not met all of the requirements of this article, or

(2) That the applicant does not have sufficient financial responsibility to engage in business as a motor club in this State, or

(3) That the applicant has failed to make a reasonable showing that its managers, officers, directors and agents are persons of reliability and integrity. If any such finding is made, the Commissioner shall notify the applicant as soon as practicable of the reason for his refusal to issue the license, and inform the applicant of its right to a hearing on the matter as provided in General Statute 66-49.14. All licenses issued hereunder, and all renewals thereof, shall expire on June 30th following such issuance or renewal. Renewal of all licenses not previously revoked or suspended shall be automatic upon timely payment by the licensee of the annual fee. (1963, c. 698.)

§ **66-49.13. Powers of Commissioner.**—The Commissioner shall have the same powers and authority for the purpose of conducting investigations and hearings under this article as that vested in him by General Statutes 58-9.2 and 58-44.6·

(1) To investigate possible violation of this article and to report evidence thereof to the Attorney General who may recommend prosecution to the appropriate solicitor;

(2) To suspend or revoke any license issued under this article upon a finding, after notice and opportunity for hearing, that the holder of said license has violated any of the provisions of this article, or has failed to maintain the standards requisite to original licensing as indicated in General Statute 66-49.12 hereof;

(3) To require any licensee to cease doing business through any particular agent or representative upon a finding after notice and opportunity for hearing, that such agent or representative has intentionally made false or misleading statements concerning the motor club services offered by the motor club represented by him;

(4) To approve or disapprove the name, trademarks, emblems, and all forms which an applicant for license or licensee employs or proposes to employ in connection with its business. If such name, trademarks or emblems is distinctive and not likely to confuse or mislead the public as to the nature or identity of the motor club using or proposing to use it, then it shall be approved, otherwise, the Commissioner may disapprove its use and effectuate such disapproval by the issuance of an appropriate order; and

(5) To make any rules or regulations necessary to enforce the provisions of this article. (1963, c. 698.)

§ **66-49.14. Hearing on denial of license; judicial review of determination by Commissioner.**—Any applicant for a license or renewal of a license hereunder shall be entitled to a hearing before the Commissioner in the event such application is denied or not acted upon within a reasonable time. Any applicant or licensee adversely affected by a determination of the Commissioner shall have a right to seek judicial review of such determination under the provisions and limitations of General Statute 58-9.3. (1963, c. 698.)

§ **66-49.15. Agent for service of process.**—Every motor club licensed hereunder shall appoint and maintain at all times an agent for service of process who shall be a resident of North Carolina. (1963, c. 698.)

§ **66-49.16. Violations; penalty.**—Any person, firm, association or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. (1963, c. 698.)

§ **66-49.17. Disposition of fees.**—In the event an application for license filed hereunder is not approved, the Commissioner shall retain ten dollars ($10.00) of the fee paid to him in connection with said application, and return the balance to the applicant. All fees collected by the Commissioner hereunder shall be available to the Department of Insurance for paying the expense incurred in connection with the administration of this article. (1963, c. 698.)

§ **66-49.18. Insurance licensing provisions not affected.**—Nothing in this article shall be construed as amending, repealing, or in any way affecting any laws now in force relating to the licensing of insurance agents or insurance companies, or to the regulation thereof, as provided in chapter 58 of the General Statutes. (1963, c. 698).

ARTICLE 10.

Fair Trade.

§ 66-50. Title of article.

Applied in Union Carbide Corp. v. Davis, 253 N. C. 324, 116 S. E. (2d) 792 (1960).

Cited in Warner v. Gulf Oil Corp., 178 F. Supp. 481 (1959).

§ 66-52. Authorized contracts relating to sale or resale of commodities bearing trademark, brand or name.

Article Is Constitutional.—The North Carolina Fair Trade Act is valid under the North Carolina Constitution and the Constitution of the United States. Parker Pen Co. v. Dart Drug Co., Inc., 202 F. Supp. 646 (1962).

ARTICLE 17.

Closing-Out Sales.

§ 66-84. Counties within article. — This article shall apply only to the following counties: Alamance, Ashe, Bertie, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Columbus, Craven, Cumberland, Davidson, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Jackson, Lee, McDowell, New Hanover, Northampton, Onslow, Orange, Pitt, Randolph, Richmond, Robeson, Sampson, Stanly, Surry, Swain, Transylvania, Union, Wake and Wayne. (1957, c. 1058, ss. 10½, 10¾; 1959, cc. 928, 1089; c. 1251, s. 1; c. 1287; 1963, cc. 205, 738.)

Editor's Note.—The first 1963 amendment inserted the county of Davidson. And the second 1963 amendment inserted the county of Sampson.

Chapter 67.

Dogs.

Article 4.

Guide Dogs.

Sec.
67-29. Accompanying blind persons in public conveyances, etc.

ARTICLE 2.

License Taxes on Dogs.

§ 67-13. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—The money arising under the provisions of this article shall be applied to the school funds of the county in which said tax is collected: Provided, it shall be the duty of the county commissioners, upon complaint made to them of injury to person or injury to or destruction of property by any dog, upon satisfactory proof of such injury or destruction, to appoint three freeholders to ascertain the amount of damages done, including necessary treatment, if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article. And in cases where the owner of such dog or dogs is known or can be ascertained, he shall reimburse the county to the amount paid out for such injury or destruction. To enforce collection of this amount the county commissioners are hereby authorized and empowered to sue for the same. Provided, further, that all that portion of this section after the word "collected," in line three, shall not apply to Alamance, Anson, Beaufort, Bladen, Caldwell, Catawba, Chatham, Cleveland, Columbus, Craven, Currituck, Dare, Davie, Duplin, Durham, Gaston, Gates, Graham, Harnett, Hertford, Lincoln, McDowell, Mecklenburg, Moore, Nash, New Hanover, Orange, Pamlico, Perquimans, Person, Robeson, Rowan, Rutherford, Scotland, Stokes, Transylvania, Union, Wake, Wayne and Yadkin counties. (1919, c. 77, s. 7; c. 116, s. 7; C. S., s. 1681; Pub. Loc. 1925, c. 54; Pub. Loc. 1927, cc. 18, 219, 504; 1929, cc. 31, 79; 1933, cc. 28, 387, 477, 526; 1935, c. 402; 1937, cc. 63, 75, 118, 282, 370; 1939, cc. 101, 153; 1941, cc. 8, 46, 132, 287; 1943, cc. 211, 371, 372; 1945, cc. 75, 107, 136, 465; 1947, c. 853, s. 1; 1953, c. 77; c. 367, s. 7; 1955, cc. 111, 134; 1957, c. 46; 1961, c. 659; 1963, c. 266, s. 1; c. 725, s. 1.)

Local Modification.—By virtue of Session Laws 1963, c. 266, s. 2, Wake should be stricken from the replacement volume.

By virtue of Session Laws 1963, c. 725, s. 2, Dare should be stricken from the replacement volume.

Editor's Note.—

The 1961 amendment inserted "Craven" in the list of counties.

The first 1963 amendment, effective July 1, 1963, inserted "Wake" in the list of counties. And the second 1963 amendment inserted "Dare."

ARTICLE 3.

Special License Tax on Dogs.

§ **67-27. Listed dogs protected; exceptions.** — Any person who shall steal any dog which has been listed for taxation as herein provided shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court; and any person who shall kill any dog the property of another, after the same has been listed as herein provided, shall be liable to the owner in damages for the value of such dog. Nothing in this article shall prevent the killing of a mad dog, sheep-killing, cattle-killing, hog-killing or goat-killing dog, or egg-sucking dog on sight, when off the premises of its owner, and the owner shall not recover any damages for the loss of such dog. (1917, c. 206, s. 9; C. S., s. 1693; 1963, c. 337.)

Editor's Note.—The 1963 amendment inserted the words "cattle-killing, hog-killing or goat-killing" in the second sentence.

ARTICLE 4.

Guide Dogs.

§ **67-29. Accompanying blind persons in public conveyances, etc.** — Any blind person accompanied by a dog described as a "guide dog," or any dog educated by a recognized training agency or school, which is used as a leader or guide, is entitled with his dog to the full and equal accommodations, advantages, facilities and privileges of all public conveyances, and all places of public accommodation, subject only to the conditions and limitations applicable to all persons not so accompanied. (1943, c. 111; 1963, c. 61.)

Editor's Note. — The 1963 amendment substituted "guide dog," for "seeing-eye dog" in the section and in the article heading.

ARTICLE 5.

Protection of Livestock and Poultry from Ranging Dogs.

§ **67-30. Appointment of county dog warden authorized; salary, etc.; dog damage fund.**

Local Modification.—Harnett: 1963, c. 664.

§ 67-33. Dogs to wear collars; tags; kennel tax.

Local Modification.—Duplin: 1963, c. 226.

§ 67-34. Board of appraisers; payment of damages; subrogation of county in action against dog owner.

Local Modification.—Johnston: 1961, c. 689

Chapter 68.

Fences and Stock Law.

ARTICLE 3.

Stock Law.

§ 68-15. Term "stock" defined.

Cross Reference.—

For acts declaring Clay and Iredell counties to be "stock-law territory," see note to G. S. 68-23.

§ 68-23. Allowing stock at large in stock-law territory forbidden.

Editor's Note.—

For acts declaring Iredell County and Clay County, respectively, to be "stock-law territory," and subject to this and other sections, see Session Laws 1961, cc. 497, 580.

§ 68-24. Impounding stock at large in territory.

Cited in Chadwick v. Salter, 254 N. C. 389 119 S. E. (2d) 158 (1961).

§ 68-36. Injury to stock-law fences misdemeanor in stock-law territory.

Editor's Note.—

For acts declaring Iredell County and Clay County, respectively, to be "stock-law territory," and subject to this and other sections, see Session Laws 1961, cc. 497, 580.

ARTICLE 4.

Stock along the Outer Banks.

§ 68-42. Stock running at large prohibited; certain ponies excepted.

Constitutionality.—In an action instituted to enjoin a sheriff from removing plaintiffs' cattle from Shackleford Banks, it was held that plaintiffs were not entitled to challenge the constitutionality of this article, since it does not purport to authorize the destruction or removal of cattle from any portion of the outer banks, but provides for enforcement of its provisions solely by criminal prosecution, and plaintiffs would be entitled to attack the constitutionality of that statute only as a defense to a criminal prosecution thereunder. Chadwick v. Salter, 254 N. C. 389, 119 S. E. (2d) 158 (1961).

Chapter 69.

Fire Protection.

ARTICLE 3.

State Volunteer Fire Department.

§ 69-23. Rights and privileges of firemen; liability of municipality.

Cross Reference.—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

ARTICLE 3A.

Rural Fire Protection Districts.

§ 69-25.8. Authority, rights, privileges and immunities of counties, etc., performing services under article.

Cross Reference.—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

Chapter 74A.

Company Police.

Sec.
74A-1. Governor may appoint and commission police for public utility and other companies; civil liability of companies.
74A-2. Oath, bond, and powers of company police.
74A-3. Company police to wear badges.
74A-4. Compensation of company police.
74A-5. Police powers cease on company's filing notice.
74A-6. Railway conductors and station agents declared special police.

§ 74A-1. Governor may appoint and commission police for public utility and other companies; civil liability of companies.—Any public utility company, construction company or manufacturing company may apply to the Governor to commission such persons as the corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this chapter. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C. S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2.)

Cross Reference.. — As to venue of action against railroad, § 1-81.

Editor's Note.—Session Laws 1963, c. 1165, amended, revised and rewrote chapters 56, 60 and 62 of the General Statutes and recodified them as a new chapter 62 and a new chapter 74A. With the exception of a few sections in new chapter 62, the act is made effective January 1, 1964. Chapter 74A is a recodification of former chapter 60, article 10, comprising §§ 60-82 to 60-87.

Former § 60-83, corresponding to new § 74A-1, was amended by Session Laws 1963, cc. 988 and 1254, and former § 60-85, corresponding to new § 74A-3, was amended by Session Laws 1963, c. 988. It is believed that it was the intention of the legislature to include all such amendments in Session Laws 1963, c. 1165; however, apparently through oversight, the changes made by cc. 988 and 1254 were not incorporated in new chapter 74A. Former § 60-83 as amended by Session Laws 1963, cc. 988 and 1254, reads as follows:

"Any corporation operating a railroad on which steam or electricity is used as the motive power or any electric or water-power company or construction company or manufacturing company or motor vehicle carrier or railway express agencies or auction companies or incorporated security patrols or corporations engaged in providing security or protective services for persons or property or educational institution, whether State or private, or any other State institution, may apply to the Governor to commission such persons as the corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company from any civil liability now existing by statute or under the common law for the act or acts of such policemen, in exercising or attempting to exercise the powers conferred by this section."

The first 1963 amendment to former § 60-83 inserted the words "or incorporated security patrols or corporations engaged in providing security or protective services for persons or property or educational institution, whether State or private, or any other State institution" in the first sentence. The amendatory act further provides: "Wherever the word 'company' is used in article 10 of chapter 60 of the General Statutes the same shall be deemed to include any above referred to institution. Notwithstanding the provisions of G. S. 60-85, any person commissioned pursuant to this act shall wear such badge as the institution may designate and direct." The second 1963 amendment to former § 60-83 made the section applicable to auction companies.

For former § 60-85 as amended by Session Laws 1963, c. 988, see Editor's Note to § 74A-3.

A railroad policeman appointed pursuant to this section, is prima facie a public officer, but the question of whether a particular act is done as an employee of the railroad company or as a public officer is a question to be determined from the nature of the act, whether it relates to vindication and enforcement of public justice or whether it is in the scope of duties owed to the company by reason of employment. Tate v. Southern Ry. Co., 205 N. C. 51, 169 S. E. 816 (1933), decided under former § 60-83.

§ **74A-2. Oath, bond, and powers of company police.**—Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath. Such policemen shall severally possess, within the limits of each county in which the public utility for which such policemen are appointed may run or in which the company may be engaged in work or business, all the powers of policemen in the several towns, cities and villages in any such county: Provided, that every policeman appointed under this chapter shall, before entering upon the duties of his office, file in the Governor's office a bond in the sum of five hundred dollars ($500.00), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office. This bond may be in cash, or it may be executed by a surety company duly authorized to transact business in this State, or it may have at least two individual sureties each owning real estate in this State and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond: Provided, that where individual sureties are used, the sufficiency of each such surety must be passed upon and approved by the clerk of the superior court of the county in which the surety resides. (1871-2, c. 138, s. 53; Code, s. 1990; Rev., s. 2607; 1907, c. 128, s. 2; c. 462; C. S., s. 3485; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1943, c. 676, s. 2; 1959, c. 124, s. 1; 1963, c. 1165, s. 2.)

Cross Reference. — As to oath required, see § 11-11.

§ **74A-3. Company police to wear badges.**—Such policemen shall, when on duty, severally wear a shield with the words "Railway Police" or "Company Police" and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives. (1871-2, c. 138, s. 54; Code, s. 1991; Rev., s. 2608; C. S., s. 3486; 1963, c. 1165, s. 2.)

Cross Reference. — As to badges of conductor and certain other railroad employees, see § 62-244.

Editor's Note.—Former § 60-85, corresponding to this section, was amended by Session Laws 1963, c. 988, to read as follows:

"Such railroad police shall, when on duty, severally wear a metallic shield with the words 'Railway Police' or other appropriate police identification and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives."

The 1963 amendment to former § 60-85 inserted the words "or other appropriate police identification" near the middle of the section.

See Editor's Note to § 74A-1.

§ **74A-4. Compensation of company police.**—The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them. (1871-2, c. 138, s. 55; Code, s. 1992; Rev., s. 2609; C. S., s. 3487; 1963, c. 1165, s. 2.)

§ **74A-5. Police powers cease on company's filing notice.**—Whenever any company shall no longer require the services of any policeman so appointed as aforesaid, it may file a notice to that effect in the office of the Governor and thereupon the power of such officer shall cease and determine. (1871-2, c. 138, s. 56; Code, s. 1993; Rev., s. 2610; C. S., s. 3488; 1943, c. 676, s. 3; 1959, c. 124, s. 2; 1963, c. 1165, s. 2.)

§ **74A-6. Railway conductors and station agents declared special police.**—All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the State of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall have such power only on their respective trains or their railroad right of way, and the agents at their respective stations; and such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability for the acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred. (1907, c. 470, ss. 3, 4; C. S., s. 3483; 1963, c. 1165, s. 2.)

Editor's Note. — For article discussing arrest without a warrant, see 15 N. C. Law Rev. 101.

Conductor Has Power of Peace Officer.—A conductor on a railroad passenger train is held to a high degree of care in looking after and protecting passengers on his train, and he is clothed, to some extent, with the powers of a peace officer. Brown v. Atlantic Coast Line R. Co., 161 N. C. 573, 77 S. E. 777 (1913), decided under former § 60-82.

See Editor's Note to § 74A-1.

Chapter 75.

Monopolies and Trusts.

Sec.
75-3. [Repealed.]

§ **75-1. Combinations in restraint of trade illegal.**

A contract between public utilities, approved by the Utilities Commission, is not violative of this section, if the Commission could have lawfully made an order to the same effect upon application and after hearing in an adverse proceeding. State v. Carolina Coach Co., 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Agreements in partial restraint of trade will be upheld when they are founded on valuable considerations, are reasonably necessary to protect the interests of the parties in whose favor they are imposed, and do not unduly prejudice the public interest. Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961).

§ **75-3**: Repealed by Session Laws 1961, c. 1153.

§ 75-4. Contracts to be in writing.

What Contracts Enforceable. — Where affidavits disclose that defendants in the course of their employment acquired knowledge which would give them an unfair advantage over plaintiff in a competitive business, under such circumstances equity will enforce a covenant not to compete if it is: (1) In writing, (2) entered into at the time and as a part of the contract of employment, (3) based on valuable considerations, (4) reasonable both as to time and territory embraced in the restrictions, (5) fair to the parties, and (6) not against public policy. Orkin Exterminating Co. of Raleigh, Inc. v. Griffin, 258 N. C. 179, 128 S. E. (2d) 139 (1962).

§ 75-5. Particular acts prohibited.

(b) In addition to the other acts declared unlawful by this chapter, it is unlawful for any person directly or indirectly to do, or to have any contract express or knowingly implied to do, any of the following acts:

(1) To agree or conspire with any other person to put down or keep down the price of any goods produced in this State by the labor of others which goods the person intends, plans or desires to buy.

(2) To sell any goods in this State upon condition that the purchaser thereof shall not deal in the goods of a competitor or rival in the business of the person making such sales.

(3) To willfully destroy or injure, or undertake to destroy or injure, the business of any competitor or business rival in this State with the purpose of attempting to fix the price of any goods when the competition is removed.

(4) While engaged in buying or selling any goods within the State, through himself or together with or through any allied, subsidiary or dependent person, to injure or destroy or undertake to injure or destroy the business of any rival or competitor, by unreasonably raising the price of any goods bought or by unreasonably lowering the price of any goods sold with the purpose of increasing the profit on the business when such rival or competitor is driven out of business, or his business is injured.

(5) While engaged in dealing in goods within this State, at a place where there is competition, to sell such goods at a price lower than is charged by such person for the same thing at another place, when there is not good and sufficient reason on account of transportation or the expense of doing business for charging less at the one place than at the other, or to give away such goods, with a view to injuring the business of another.

(6) While engaged in buying or selling any goods in this State, to have any agreement or understanding, express or implied, with any other person not to buy or sell such goods within certain territorial limits within the State, with the intention of preventing competition in selling or to fix the price or prevent competition in buying such goods within these limits.

(7) Except as may be otherwise provided by article 10 of chapter 66, entitled "Fair Trade", while engaged in buying or selling any goods in this State to make, enter into, execute or carry out any contract, obligation or agreement of any kind by which the parties thereto or any two or more of them bind themselves not to sell or dispose of any goods or any article of trade, use or consumption, below a common standard figure, or fixed value, or establish or settle the price

of such goods between them, or between themselves and others, at a fixed or graduated figure, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale of such goods.

(1961, c. 407, s. 1.)

Editor's Note.—

The 1961 amendment added subdivision (7) of subsection (b), and only such subsection is set out. Section 2 of the amendatory act provides that the provisions of this subsection shall not apply to any act which is done in compliance with the rules and regulations of any State regulatory agency.

Restrictive Stipulations in Sale.—

A limitation or restriction upon a person's right to engage in a lawful occupation or business is deemed detrimental to the public interest, unless the restraint imposed is reasonable under the proper tests. Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961).

Test as to Reasonableness.—

In connection with the sale of a business, including good will, the validity of a covenant providing that the seller will not engage in business in competition with the buyer is determinable by these tests: (1) Is it reasonably necessary to protect the legitimate interests of the purchaser? (2) Is the limitation or restriction reasonable in respect of both time and territory? Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961).

Contract Not to Engage in Competing Business—By Employee.—The validity of a covenant in a contract of employment providing that, upon termination of the employer-employee relationship, the employee will not engage in a business in competition with the employer, is determinable by these tests: (1) Is it founded on a valuable consideration? (2) Is it reasonably necessary to protect the legitimate interests of the employer? (3) Is the limitation or restriction reasonable in respect of both time and territory? Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961).

An exclusive dealership in one make of automobile in a particular city, while it necessarily involves a limited monopoly to sell this product of the manufacturer in the area covered thereby, is not invalid as an unreasonable restraint on trade, the agreement not being between competitors but imposing restraint upon a manufacturer and in favor of its dealer. Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961).

§ 75-16. Civil action by person injured; treble damages.

Cited in Waldron Buick Co. v. General Motors Corp., 254 N. C. 117, 118 S. E. (2d) 559 (1961); Ramsey v. Camp, 254 N. C. 443, 119 S. E. (2d) 209 (1961).

Chapter 75A.

Motorboats.

Sec.

75A-5.1. Commercial fishing boats; renewal of number.

§ 75A-1. Declaration of policy.

Cross Reference.—As to service of process upon nonresident operator of watercraft, see § 1-107.2.

Quoted in Grindstaff v. Watts, 254 N. C. 568, 119 S. E. (2d) 784 (1961).

§ 75A-2. Definitions.

Cross Reference. — As to motorboats used primarily for commercial fishing operations, see § 113-174.7.

§ 75A-3. Wildlife Resources Commission to administer chapter; Motorboat Committee; funds for administration.

(c) All expenses required for administration and enforcement of this chapter shall be paid from the funds collected pursuant to the numbering provisions of this chapter, provided however, that the Wildlife Resources Commission is hereby authorized, subject to the approval of the Advisory Budget Commission and the Governor and Council of State, to borrow funds from the Contingency and Emergency Fund in an amount not to exceed one hundred thousand dollars ($100,000.00), to be used for initiating the provisions of this chapter and to be repaid from the funds collected pursuant to the numbering provisions of this chapter in four equal installments, the first installment in the amount of twenty-five thousand dollars ($25,000.00) to be remitted on or before September 1, 1961, and a like sum to become due and payable on the first day of September during each of the years 1962, 1963 and 1964. All monies collected pursuant to the numbering provisions of this chapter shall be deposited in the State treasury and credited to a special fund known as the Wildlife Resources Fund and accounted for as a separate part thereof. The said monies shall be made available to the Wildlife Resources Commission, subject to the provisions of the Executive Budget Act and the provisions of the Personnel Act of the General Statutes of North Carolina, for the administration and enforcement of this chapter as herein provided and for educational activities relating to boating safety and for acquisition of land and provision of facilities for access to waters of this State and for no other purpose. All monies collected pursuant to the numbering provisions of this chapter and monies otherwise provided for in this chapter shall be made available to carry out the intent and purposes as set forth herein in accordance with plans approved by the Wildlife Resources Commission and all such funds are hereby appropriated, reserved, set aside and made available until expended for the enforcement and administration of this chapter; provided that the Wildlife Resources Commission is hereby authorized to adopt a plan or formula for the use of said monies for employing and equipping such additional personnel as may be necesssary for carrying out the provisions of this chapter and for paying a proportionate share of the salaries, expense, and operational costs of existing personnel according to the time and effort expended by them in carrying out the provisions of this chapter. Such plan or formula may be altered or amended from time to time by the Wildlife Resources Commission as existing conditions may warrant. No funds derived from the sale of hunting licenses or fishing licenses shall be expended or diverted for carrying out the provisions of this chapter. (1959, c. 1064, s. 3; 1961, c. 644; 1963, c. 1003.)

Editor's Note. — The 1961 amendment rewrote the latter part of the first sentence of subsection (c).

The 1963 amendment inserted near the end of the third sentence of subsection (c) the words "and for acquisition of land and provision of facilities for access to waters of this State."

As only this subsection was changed the rest of the section is not set out.

§ **75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers.**—(a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner, or his agent, of the motorboat and shall be accompanied by a fee of three dollars ($3.00). Upon receipt of the application in approved form the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(h) Each certificate of number awarded pursuant to this chapter must be renewed each year on or before January 1; otherwise, such certificate shall lapse and be void. Application for renewal shall be submitted on forms approved by the Wildlife Resources Commission and shall be accompanied by a fee of three dollars ($3.00); provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing boats as defined in G. S. 75A-5.1, upon compliance with all of the requirements of that section.

(1961, c. 469, s. 1; 1963, c. 470.)

Editor's Note.—The 1961 amendment, effective July 1, 1961, added the proviso to subsection (h).

The 1963 amendment added the proviso to subsection (a).

As only subsections (a) and (h) were changed by the amendments the rest of the section is not set out.

§ 75A-5.1. Commercial fishing boats; renewal of number.—(a) The owner or operator of any commercial fishing boat which is currently licensed for the use of commercial fishing gear under the provisions of G. S. 113-174.7, shall be entitled to renewal of the certificate of number of such boat when such owner has complied with all of the conditions of this section.

(b) For the purpose of this section, commercial fishing boats are defined as motorboats which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the boat shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of such boat, as provided by G. S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the boat for which the application for renewal is made is a commercial fishing boat as herein defined; and

(3) A receipt, signed by an authorized agent of the Department of Conservation and Development, and bearing the number awarded to the boat under the provisions of this chapter, showing that the commercial fishing boat license tax imposed by G. S. 113-174.7 has been paid for such boat for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall wilfully give false information upon the application or the statement required by the preceding paragraph, or who shall falsify any tax receipt thereby required, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine or imprisonment, or both, in the discretion of the court. (1961, c. 469, s. 2.)

Editor's Note.—The act inserting this section became effective as of July 1, 1961.

Section 3 of the act inserting this section provides that nothing in the act shall be construed to change the fee for the original registration of any motorboat under the provisions of this chapter, or for the renumbering of any motorboat the number of which has lapsed by reason of nonrenewal.

§ 75A-6. Classification and required lights and equipment; rules and regulations.

(n) All boats propelled by machinery ot 10 hp or less, which are operated on the public waters of this State, shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, and from sunset to sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. Provided, that the provisions of this subsection shall not be construed so as to conflict with or repeal any of the requirements or provisions set forth elsewhere in this chapter; provided further, that the provisions of this subsection shall not apply to Brunswick, Carteret, Chatham, Columbus, Duplin, Lee, New Hanover, Onslow, Pender and Rockingham, counties. (1959, c. 1064, s. 6; 1963, c. 396.)

Editor's Note. — The 1963 amendment, effective June 1, 1963, added subsection (n). As the rest of the section was not affected by the amendment it is not set out.

§ 75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.

Stated in Grindstaff v. Watts, 254 N. C. 568, 119 S. E. (2d) 784 (1961).

§ 75A-11. Duty of operator involved in collision, accident or other casualty.

Cross Reference.—As to service of process upon nonresident operator of watercraft, see § 1-107.2.

Chapter 76.

Navigation.

ARTICLE 2.

Beaufort Harbor.

§ 76-33. Vessels required to take pilots.

Applied in United States v. Tug Parris Island, 215 F. Supp. 144 (1963).

Chapter 77.

Rivers and Creeks.

ARTICLE 1.

Commissioners for Opening and Clearing Streams.

§ 77-1. County commissioners to appoint commissioners.

Editor's Note.—The words "line or their county" in line two of this section in the Replacement Volume should read "line of their county."

ARTICLE 2.

Obstructions in Streams.

§ 77-14. Obstructions in streams and drainage ditches.—If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine, ditch or other outlet which serves to remove water from any land whatsoever whereby the natural and normal drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall remove such above-described obstruction or substance within seven calendar days and, upon failure to so remove, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court: Provided, however, nothing herein shall prevent the construction of any dam not otherwise prohibited by any valid local or State statute or regulation.

All sheriffs, wildlife protectors, highway patrolmen and township constables, or other persons knowing of such violations, shall report to the board of county commissioners, of the county in which such above-described obstruction of drainage takes place, the names of any persons, firms or corporations violating the provisions of this section, and it shall be the duty of the chairman of the board of county commissioners to report to the county court solicitor, if there is one, and, if not, to the district solicitor, facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute such violators. The provisions of this section shall not apply to the counties of Chatham, Forsyth, Franklin, Gaston and Lee. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507.)

Editor's Note.—

The 1961 amendment deleted Halifax from the last sentence, thereby making this section applicable to Halifax County.

Chapter 80.

Trademarks, Brands, etc.

ARTICLE 1.

Trademarks.

§ 80-1. Adoption and filing for registry; "person" defined.

Common Law Not Abrogated.—Nothing contained in this chapter indicates an intention of the General Assembly to abrogate the common law. Allen v. Standard Crankshaft & Hydraulic Co., Inc., 210 F. Supp. 844 (1962).

State statutes providing for registration of trademarks are in affirmance of the common law. Allen v. Standard Crankshaft & Hydraulic Co., Inc., 210 F. Supp. 844 (1962).

Remedies Are Either Declaratory or Cumulative.—The remedies given by statutes providing for registration of trademarks are either declaratory or are cumulative and additional to those recognized and applied by the common law. Allen v. Standard Crankshaft & Hydraulic Co., Inc., 210 F. Supp. 844 (1962).

Chapter Does Not Deal with Trade Names.—This chapter deals with trademarks and service marks and not trade names. Hot Shoppes, Inc. v. Hot Shoppe, Inc., 203 F. Supp. 777 (1962).

Chapter 81.

Weights and Measures.

ARTICLE 1.

Uniform Weights and Measures.

§ 81-10. Authority of deputy or local inspector.

Stated in Eastern Carolina Tastee-Freez, Inc. v. Raleigh, 256 N. C. 208, 123 S. E. (2d) 632 (1962).

ARTICLE 8.

Storage, Handling and Distribution of Liquid Fertilizers.

§ 81-74. Definitions.

(f) Liquid Fertilizer—The term "liquid fertilizer" as used herein shall be construed as being a nonsolid commercial fertilizer as commercial fertilizer is defined in § 106-50.3 (2), article 2, chapter 106 of the General Statutes known as the North Carolina Fertilizer Law.

(g) Quality.—The term "quality" shall be construed to mean grade as defined in chapter 106, article 2, § 106-50.3 (6) of the General Statutes.

Editor's Note.—

Subsections (f) and (g) are reprinted to correct matters of reference. The rest of the section is not set out.

§ 81-78. Approval of storage and handling equipment.

Editor's Note.—The words "this article" in line ten of this section in the Recompiled Volume should be construed to mean "G. S. 106-50.3 (3)."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina
October 1, 1963

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1963 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON,
Attorney General of North Carolina

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